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BUDGET 2019 – 2020 TAX FLASH

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FOREWORD

The highly anticipated Budget speech for 2019-2020 was delivered by the Prime Minister and Minister of Finance & Economic Development on Monday 10 June 2019. Preparing an impactful budget in an election year was always going to be a tall order. Whilst the Budget was built around 10 main avenues centered mainly on consolidating socio-economic growth, infrastructural development and environmental protection, the fiscal measures announced are aimed at strengthening the existing legislative tax framework, addressing certain stakeholders' concerns and further aligning our tax regime with international standards.

Together with certain unsurprising populist measures, this Budget feels somewhat lukewarm in terms of fiscal reform. However, where the Budget speech lacks in punch, the Annex makes up for it in terms of consolidating of a number of measures brought in last year's Finance Act.

This Budget Tax Flash analyses some of the tax-related measures announced in the Budget speech and accompanying Annex.

ANALYSIS

The tax proposals can be broadly categorized in two sets: (i) implementing tax measures in order to encourage the development of innovative products within the Mauritius International Financial Centre (ii) amending existing tax legislation to comply with standards sets by international organisations such as the OECD and the EU.

The proposed tax holidays to be granted on innovation box regime (8 years), e-commerce platform (5 years) and peer-to-peer lending (5 years) are in line with the Government's vision to position Mauritius as a hub for innovative activities. However, particularly for innovation-driven activities, the companies will need to satisfy the substance requirements (including the development of IP assets in Mauritius) in accordance with OECD standards in order to benefit from the tax holiday. The proposal for a new regime for Real Estate Investment Trusts will also need to be tax efficient and OECD compliant.

The introduction of POEM (place of effective management) in last year's Finance Act was not particularly well received by the financial services industry and tax practitioners. The potential uncertainty that could be raised by an additional limb to the residency test appeared to far outweigh any benefits. The proposal to revert to a "control and management" test is sensible and is more in line with international standards for determining tax residency.

One of the most significant changes in last year's Finance Act was the reform of any tax laws which may be considered as harmful tax practices. The deemed foreign tax credit was abolished and instead a partial tax regime was established. This year's Budget fixes other regimes which may be considered as ring-fencing the domestic market from the foreign market such as the Freeport sector.

The decision to extend the application of the partial exemption regime to international fibre capacity activities, reinsurance and reinsurance brokering and aviation-related activities will be a welcome one. It was hoped that the extension would be broader (such as the taxation of digital goods and leasing of locomotives) but this was always going to be a delicate exercise with the backdrop of the OECD looming close by. The substance requirements attached to the partial exemption regime will be further defined and in particular in relation to outsourcing activities. These measures are being implemented to deal with the concerns raised by the EU earlier this year on our substance requirements.

The Annex also mentions the introduction of CFC legislation in Mauritius. This latest measure is likely to be unpopular among stakeholders as the relevance of CFC rules in Mauritius is questionable, at best.

Also tucked away in the Annex is a seemingly innocuous comment on the legal provision on the arm's length test. Tax practitioners will appreciate the relevance of this comment in the light of the sizeable transfer pricing assessments raised by the Mauritius Revenue Authority ("MRA") recently and the high-profile cases currently before the Assessment Review Committee. Undoubtedly, transfer pricing has become a huge source of tax controversy globally and the African continent is no exception. However, it is hoped that any amendments to our transfer pricing legislation will be consistent with OECD guidelines and will be supported by intensive capacity building at the MRA.

Finally, we note that September 2018 marked a significant milestone in automatic exchange of information in tax matters as Mauritius exchanged financial account information with over 50 other countries under the Common Reporting Standard.

Voluntary disclosure schemes have proved hugely successful in encouraging taxpayers who have evaded tax in voluntarily disclosing undeclared income without interest or penalties. The Africa Initiative 2018 Progress Report on tax transparency highlighted that South Africa raised more than USD 283m in tax revenues since its implementation of CRS. Similar trends can be found globally.

SUMMARY OF PROPOSALS

A detailed summary of the tax-related proposals is set out below.

INCOME TAX

Tax Holidays

(i) Innovation Box Regime

- Companies engaged in innovation-driven activities will now benefit from a tax holiday of 8 years on income derived from their intellectual property assets developed in Mauritius subject to the fulfilment of pre-defined substantial activities conditions in line with BEPS requirements.

(ii) E-Commerce Platform

- Companies incorporated in Mauritius before 30th June 2025 with a view to operate an e-commerce platform will be granted a 5 year tax holiday.

(iii) Peer-to-Peer Lending

- Following the publication of the Peer-to-Peer Lending Rules by the FSC last year, it is now contemplated that Peer-to-Peer lending operators will benefit from a 5-year tax holiday subject to the former being operational before 31st December 2020.

Accelerated Depreciation

(iv) The threshold in relation to capital expenditure incurred on plant or machinery that may be fully deducted as expenses is now 60,000 MUR.

Taxation of Banks

(v) Summary of Proposed Measures

- Income derived by banks from Global Business Companies will not be subject to the levy under the Value Added Tax Act 1998;
- Banks having operating income exceeding 1.2 billion MUR per year will attract a levy of 4.5% on their operating income;
- The above mentioned levy will not fall to be a deductible expense under corporate tax and no foreign tax credit will be allowed.
- Banks which grant at least 5% of their new banking facilities to (i) SMEs in Mauritius; (ii) companies operating in agricultural, manufacturing or production of renewable energy in Mauritius; or (iii) operators in African or Asian countries will benefit from a tax rate of 5% on its chargeable income in excess of its chargeable income in the base year (YOA 2017/2018).

Freeport Regime

(vi) Freeport operators will be liable to income tax at the rate of 3% on profits pertaining to the sale of goods on the local market. Freeport operators in the manufacturing sector will need to satisfy certain substance criteria.

Peer to Peer Lending

(vii) Individuals receiving interest income from Peer to Peer lending will be liable to income tax at the rate of 3% and they will be able to deduct bad debt and fees.

Tax on Winnings

(viii) Casino or gaming houses will not be allowed to split payments to winners in order to circumvent payment of 10% tax (and therefore reporting) on winnings in excess of 100,000 MUR.

(ix) Casino or gaming houses will now have to report wins as from 50,000 MUR to the MRA.

Carry Forward of Unrelieved Tax Losses

(x) A company will not be able to carry forward its accumulated losses if there is a change in the ownership of the company. However, it is contemplated that in the case of a company in the above situation, the latter may be allowed to carry forward its accumulated losses if the Minister deems it to be in the public interest to do so and subject to the fulfilment of conditions relating to safeguard of employment. This amendment will be deemed to be effective as from 1st July 2018.

TAX ADMINISTRATION

General

(i) Voluntary Disclosure of Income Scheme-Foreign Assets

Taxpayers will be given the opportunity to voluntarily disclose previously undeclared income held in a bank account overseas or used to purchase foreign assets. If they do so before 31st March 2020, they will not have to pay any interest or penalty on same subject to certain conditions.

(ii) Voluntary Disclosure of Income Scheme-SMEs

SMEs will be allowed to regularise their tax affairs with the MRA without being subject to penalty and interest.

(iii) Assessment Review Committee-Filing of Statement of Case

The Mauritius Revenue Authority Act 2004 already catered for a statement of case to be provided alongside with representations to be lodged in the case of a review. It is now contemplated that an aggrieved taxpayer will be given sufficient time to file his statement of case and other relevant documents to the Assessment Review Committee ("ARC"). Moreover, the ARC may now proceed with the hearing of the case if the Chairperson/Vice Chairperson of the ARC is satisfied that failure to provide the statement of case is due to a reasonable cause.

Tax Administration: Income Tax

(iv) Section 75 of the Income Tax Act 1995, which currently deals with the application of the arm's length test, will be amended to provide for more clarity.

Tax Administration: Value Added Tax

(v) A number of clarifications to be brought to the provisions of the VAT Act 1998:

- "*Where a local company supplies services to a foreign company who is outside Mauritius, the services will be zero-rated for VAT purposes provided the foreign company does not in turn supply these same services to another local company*."
- "*where there is a splitting of a business entity into entities to avoid registration for VAT purposes, each entity will be required to be compulsorily registered for VAT.*" Under the current provisions, the Director-General is able to issue a direction to that person directing the split businesses shall be treated as a single taxable person which shall then be liable for registration. This amendment will clarify that each entity will be required to be registered for VAT purposes.

(vi) Now VAT-registered persons will be able to claim repayment of input tax in respect of (i) goodwill on acquisition of business; and (ii) the acquisition of intangible asset.

GLOBAL BUSINESS COMPANIES – TAXATION

(i) Tax Residence

The Income Tax Act 1995 (and also the Financial Services Act 2007) will be revised to provide that a company will not be considered as tax resident in Mauritius if it is centrally managed and controlled outside of Mauritius.

(ii) Partial Exemption

- Further detailed substance requirements will be incorporated to ensure the availability of the partial exemption only where those requirements are met.
- In relation to "core income generating activities", the companies should meet a number of conditions: (i) they should be able to demonstrate monitoring of the outsourced activities; (ii) the outsourced activities must be conducted in Mauritius and (iii) the economic substance of service providers must not be counted multiple times in relation to demonstrating substance.
- Partial exemption regime will now cover (i) companies engaged in leasing and provision of international fibre capacity, (ii) companies engaged in reinsurance and reinsurance brokering as well those engaged in the sale, financing arrangement and asset management of aircraft including aviation related advisory services.

(iii) Controlled Foreign Company

- Rules on Controlled Foreign Company will be introduced in the Income Tax Act 1995.

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