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Summary and conclusions

Investment funds established in Mauritius are licensed by the Financial Services Commission, the local regulator, and operate in a well-regulated environment. Commonly set up either as companies or limited liability partnerships, the legal framework has considerable flexibility and is able to accommodate various investor interests and requirements.

Traditionally, Mauritius was particularly attractive for funds investing in India. With the important amendments to the India-Mauritius double tax avoidance treaty in 2016, the trend has now shifted to the African continent. Industry experts view Mauritius as having the most conducive enabling environment in Africa for private equity funds, in terms of general investment climate, perceived low political risk, availability of financial service providers backed by skilled professionals, absence of exchange control regulation and enabling regulatory and institutional frameworks.

With its diversified economy and friendly business environment, Mauritius is positioned to act as an investment platform between Africa and Asia. Mauritius also has a wide network of Investment Promotion and Protection Agreements (IPPAs), allowing for investment protection and security against expropriation as well as dispute resolution. The IPPAs allow the country risk, which is the main challenge and obstacle for many African countries, to be mitigated to a great extent, thus providing for more security in African investments. In addition, Mauritius has a wide tax treaty network, which can help further mitigate any withholding taxes suffered at target level.

Most funds in Mauritius are set up for international investors and invest outside Mauritius and are therefore licensed as "global schemes". The investment businesses of the investment funds are regulated by the Securities Act 2005 and by the "best industry practices" rules set out by the Financial Services Commission.

Investment funds are set up either as "collective investment schemes" (broadly open-ended funds) and closed-end funds, which are particularly suited to private equity funds with limited life spans. There are also specialised funds, such as professional collective investment schemes, specialised collective investment schemes and expert funds.

An investment fund incorporated in Mauritius will generally be tax resident in Mauritius, unless its place of effective management is situated outside Mauritius. This concept of "place of effective management" has recently been incorporated into the tax laws of Mauritius and further guidance is expected on its interpretation. However, it is expected that an investment fund which is managed and controlled in Mauritius and meets the required regulatory substance requirements (see further below) will be tax resident in Mauritius.

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The headline tax rate in Mauritius is 15%. However, the maximum tax rate that an investment fund will be subject to is 3%. In practice, absolute tax neutrality can be achieved for a fund which makes significant investment in underlying targets (such as a private equity fund) since credit can be claimed in Mauritius for foreign tax suffered. In addition, any disposals of underlying securities by the fund will not be subject to any taxes in Mauritius (including transfer taxes).

From 1 January 2019, the tax laws of Mauritius have been significantly overhauled to bring them in line with OECD's requirements, particularly concerning Action Point 5 on harmful tax practices. As a result, investment funds as well as fund managers which are established and licensed in Mauritius will need to meet a number of substance conditions in order to benefit from the 3% tax rate on their profits. Those substance requirements mainly relate to the core income generating activity of the fund (and if applicable, the fund manager) being in or from Mauritius, a minimum amount of annual expenditure incurred in Mauritius (USD 25,000 for a fund and USD 30,000 for a fund manager) and a minimum number of (direct or indirect) employees (1 employee for a fund and between 1 and 3 employees for a fund manager).

Non-resident investors in a "global scheme" generally do not suffer an additional layer of taxation in Mauritius since there are no withholding taxes on dividends and no taxes on disposals of fund interests. Resident investors (though they are not as common as non-resident investors) do not suffer any additional taxation on receipt of dividends (apart from a 5% solidarity levy should their income for that year exceed a certain threshold) or on disposals of their fund interests. Bond funds are quite rare in Mauritius and may result in additional taxation in the hands of the resident investor.

Mauritius also provides an attractive regulatory framework for fund managers and fund administrators who wish to be established and licensed in Mauritius. From 1 January 2019, the income of fund managers will be taxed at the rate of 3%, provided that the fund manager satisfies key substance conditions relating to its activity being carried out in Mauritius, minimum annual expenditure and minimum employment. In the context of private equity funds, managers who earn their remuneration through distributions made on a separate share class, do not suffer any additional taxation in Mauritius since dividends are exempt. In addition, a number of tax holiday schemes have been introduced in Mauritius (for example tax holiday on the income of employees of asset managers) in order to encourage the use of Mauritius as a wealth and asset management hub.

The legislative framework also allows for investment funds to be set up as tax transparent entities (such as partnerships) or segregated entities (protected cell companies). Tax transparent entities are particularly popular in the private equity space and are often favoured by investors who prefer the contractual flexibility offered by a limited liability partnership (as opposed to a company which has to comply with certain mandatory provisions of the Companies Act). A protected cell company is also a popular vehicle which offers the investors the opportunity to invest in different share classes with different risk profiles, with the assets and liabilities of each share class being statutorily ring fenced.

Mauritius has implemented automatic exchange of information legislation, namely the Common Reporting Standard and US Foreign Account Tax Compliance Act (FATCA), in its domestic framework. Investment funds which are financial institutions therefore have to report on certain non-resident investors to the Mauritius Revenue Authority.

Overview of investment funds in Mauritius

Industry experts view Mauritius as having the most conducive enabling environment in Africa for private equity funds, in terms of general investment climate, perceived low political risk, availability of financial service providers backed by skilled professionals, and enabling regulatory and institutional frameworks.

Mauritius has a diversified economy and friendly business environment and is positioned to act as an investment platform between Africa and Asia.

Mauritius-based investment funds are commonly registered under the provisions of the Companies Act and licensed as Category 1 Global Business Companies (GBC1) under the Financial Services Act. The investment business of the company is regulated under the Securities Act and by the "best industry practices" rules set out by the Financial Services Commission (FSC), which is the local regulator. There are a number of different categories of investment funds which are regulated in Mauritius, namely collective investment schemes (CIS)[3], closed-ended funds (CEFs)[4], professional collective investment schemes and expert funds.

There is considerable flexibility in the capital structuring of such investment companies, accommodating various investor interests and conditions, which are particularly suited to private equity funds with limited life spans.[5] Intermediaries, CIS managers, custodians and fund administrators ensure the proper functioning of the regulated funds and have to undergo a rigorous assessment during the licensing process. Once licensed, the FSC continually monitors the intermediaries for compliance with supervisory, prudential and conduct of business norms in accordance with the existing laws and regulations.

Mauritius is politically, socially and economically stable. The Rule of Law is an important feature of the Mauritius legal system. Mauritius also has a strong, independent judiciary. Tax disputes sometimes end up before the Supreme Court and investors often feel comforted to know that the Privy Council in the UK is the ultimate Court of Appeal, which gives certainty to the global investors' community.

Mauritius also has a network of Investment Promotion and Protection Agreements (commonly referred to as IPPAs) allowing for investment protection and security against expropriation as well as dispute resolution. The IPPAs allow the "country risk" (the main challenge and obstacle for many African countries) to be mitigated to a great extent, thus providing for more security in African investments.

Mauritius is rated as a compliant jurisdiction by the OECD and, in line with the international movement towards transparency and automatic exchange of information, Mauritius has taken significant steps to enhance the legal and regulatory framework of its exchange of information mechanism.

On 30 May 2013, the FSC signed the Memorandum of Understanding relating to the supervision of Alternative Investment Funds Managers Directive (AIFMD) with 23 European Union (EU) / European Economic Area (EEA) Securities Regulators. These memoranda give investors the possibility to use CIS/CEFs set up in Mauritius for investment and distribution in European countries. As such, post 22 July 2013, with the coming into effect of the AIFMD,

[3] CISs are normally open-ended funds which can be redeemed at the request of the holder.

[4] Closed-end funds are funds whose share capital is typically "fixed"; the shares are not redeemable but they can be listed.

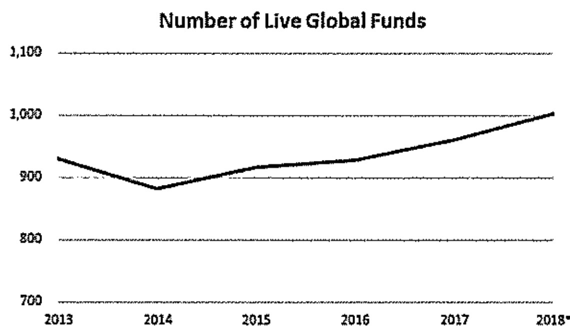
[5] Special thanks to Mr Ganessen Soobramanien for his technical assistance.

Mauritius-authorised CIS/CEFs are able to continue marketing their funds in Europe as per the requirements of the AIFMD.

Mauritius has implemented automatic exchange of information legislation (the Common Reporting Standard (CRS) and FATCA) in its domestic legislation. To the extent that investment funds are considered to be reporting financial institutions, they will need to report on certain non-resident investors/investors who are US persons (as the case may be) to the Mauritius Revenue Authority on an annual basis. The first reporting under FATCA took place in September 2015 and the first reporting under CRS took place in September 2018. PE funds and other investment funds which have significant stakes in operating companies may be treated as being "active non-financial entities" under CRS and FATCA and therefore may not have reporting obligations under FATCA or CRS.

The following graph shows the total number of funds licensed from 2013 to 2018 in Mauritius:

Global Funds	2013	2014	2015	2016	2017	2018
Number of Live Companies at end December (*end July)	930	883	917	929	962	1,003



Part One: Taxation of investment funds

The taxation of investment funds in Mauritius generally does not depend on the regulatory framework applicable to the type of fund. In other words, retail and non-retail funds, closed-end and open-ended funds are broadly subject to the same tax treatment. However, investment funds are not taxed in the same manner as an ordinary business entity.

Investment funds in Mauritius are usually structured either as retail funds or non-retail funds. The legislative framework in Mauritius does have specific legislation for mutual funds and UCITS. Due to protective regulations that are applicable to retail funds, retail funds are generally only open-ended funds; it is not practicable to form closed-end funds under the

retail category. All fund authorisations/licences are issued by the FSC, the integrated regulator for the non-bank financial services sector and global business.

1.1. Widely held investment funds

An open-ended retail fund will typically take the legal form of a private or public company or a protected cell company. There is no legal prohibition for an open-ended fund to be established as a société (formed pursuant to the Code Civil Mauricien) or a limited partnership (under the Limited Partnership Act) but this is uncommon. The Securities Act also allows for investment funds to be structured as trusts; however, these are quite rare as the legislative framework for funds to be structured as trusts is inadequate (for example, the current framework does not cater to the creation of unit trusts).

1.1.1. Taxation of domestic widely held retail funds

For the purposes of this paper, we shall refer to a domestic retail fund as one that is subscribed for mainly by retail investors who are resident of Mauritius. As there are no foreign exchange restrictions in Mauritius, most domestic retail funds will hold a portfolio of domestic as well as foreign investments. On the other hand, retail funds which invest primarily outside Mauritius and whose securities are issued primarily to non-residents of Mauritius generally apply for a global business licence category 1 issued by the Mauritius Financial Services Commission (FSC) (renamed global business licence from 1 January 2019). Such retail funds are referred to as global schemes (see further section 1.1.2 below). Most retail funds authorised in Mauritius are global schemes. The number of domestic funds is relatively small compared to global schemes.

Retail funds can take the form of a company, a protected cell company or (more rarely) a limited partnership.

The standard tax rate in Mauritius is 15%.

If structured as a company, the domestic retail fund is taxed in the following manner:

- It is exempt of Mauritius income tax on locally sourced dividends.
- From 1 January 2019, all other income (including foreign-sourced income) will benefit from a partial exemption equal to 80% of the income.[6] The partial exemption applies if the investment fund is a collective investment scheme (which a domestic retail fund would be) and has the requisite commercial substance in Mauritius, which should not be a challenge for a domestic fund (see further paragraph 1.1.2 below on substance requirements).
- A Mauritius company is also able to claim credit for foreign tax actually suffered.[7] If the retail fund has a significant amount of foreign-sourced income which has suffered withholding taxes which exceeds 12%, then the fund may be able to instead opt to claim credit for actual foreign taxes suffered rather than avail from the partial exemption system. A fund should be able to choose for which items of income it is able to claim the partial exemption and for which items it is able to claim credit for foreign tax pursuant to the Income Tax (Foreign Tax Credit) Regulations (which have recently been amended pursuant to the Finance (Miscellaneous Provisions) Act 2018 (FA 2018)).

6 Para. 41, Sub-Part C, Part II, Second Schedule Income Tax Act (ITA).
7 The Income Tax (Foreign Tax Credit) Regulations 1996.

- The retail fund should not be subject to tax on any disposals of securities.[8] It is apposite to note that 'securities' in the context of this safe harbour provision are quite broadly defined as:
  "(a) shares or stocks in the share capital of a company, whether incorporated in Mauritius or elsewhere, other than a collective investment scheme;
  (b) debentures, debenture stock, loan stock, bonds, convertible bonds or other similar instruments;
  (c) rights warrants, options or interests in respect of securities mentioned in paragraphs (a) and (b);
  (d) treasury bills, loan stock, bonds and other instruments creating or acknowledging indebtedness and issued by or on behalf of or guaranteed by the government of the Republic of Mauritius or the government of another country, a local authority or public authority, as may be prescribed;
  (e) shares in, securities of, or rights to participate in, a collective investment scheme;
  (f) depository receipts or similar instruments;
  (g) options, futures, forwards and other derivatives whether on securities or commodities;
  (h) any other transferable securities, interests or assets as may be approved by the Commission; or
  (i) any such other instruments as may be prescribed",
  and therefore is capable of capturing a wide range of activities of the fund (including trading in derivatives).
- A fund can also be formed as a protected cell company (PCC). A PCC is taxed either on a cell by cell basis (i.e. as if each cell was a single taxable entity) or the whole PCC is taxed as one taxable unit.[9] Such flexibility exists because very often the identity and relative interest of investors differ from one cell to another in a PCC.
  Whichever option is applicable, the tax treatment will strictly follow the taxation treatment of companies as described above.

Although it is quite rare, a retail fund can also be established as a limited partnership, although this is not common among domestic funds. A domestic retail fund structured as a limited partnership will be transparent for tax purposes: it will therefore not be subject to tax in Mauritius.[10] Instead its partners will be subject to tax on their respective share of income in the partnership (this is further discussed in part two below).

1.1.2 *Taxation of foreign widely held retail funds*

- As explained in section 1.1.1 above, in practice, a retail fund with majority of foreign investors and which invests principally outside Mauritius will hold a global business licence, such fund being thus referred to as a global scheme. Until the enactment of FA

[8] Item 7, Sub-Part C, Part II, Second Schedule (as recently amended by the Income Tax (Amendment of Schedule) (No. 2) Regulations 2018. Previously this exemption only applied to gains or profits made by a global business company.

[9] S. 48 ITA (if the protected cell company has made an election under the Companies Act to present separate financial statements in respect of each of its cells, every cell of that company shall be deemed to be an entity separate from the protected cell company and other cells of the protected cell company and shall be liable to income tax in respect of its own income).

[10] S. 47 ITA.

2018, global schemes were able to benefit from a deemed foreign tax credit mechanism (as opposed to domestic funds which were not entitled to this deemed foreign tax credit mechanism). This deemed tax credit mechanism enabled any corporation holding a GBC1 licence – including an investment fund – to claim credit for foreign tax suffered equal to 80% of the gross income against Mauritian tax payable (it being a "deemed" credit because there was no requirement to show evidence of actual foreign tax suffered). The operation of this deemed foreign tax credit mechanism therefore limited the maximum rate of tax on chargeable income for any GBC1 corporation to 3%, regardless of whether it had actually suffered any foreign taxes. This deemed foreign tax credit mechanism ran alongside the actual tax credit system whereby the Mauritius tax payable may be even lower (brought down to zero percent) if evidences of foreign tax suffered demonstrated that actual foreign tax paid was higher than 80% of Mauritian tax payable. Due to concerns that this deemed foreign tax credit system could be considered to be a harmful tax practice within the meaning of Action Point 5 of the OECD's BEPS proposals, the system was abolished by FA 2018 effective as from 1 January 2019. There are some limited grandfathering provisions for GBC1 corporations which were licensed on 16 October 2017 or earlier which may continue to avail from this regime until 30 June 2021 (a legal deadline in line with OECD prescription (OECD Progress report)).

– If a global scheme is established as a company, the treatment is the same as for the domestic fund (as set out in section 1.1.1 above).
  (i) As mentioned in section 1.1.1 above, in order to avail from the partial exemption on its income, the retail fund would need to satisfy commercial substance conditions. Pursuant to circulars issued by the FSC on 12 October and 15 October 2018, the core generating activity of the fund will need to be carried out in, or from, Mauritius by employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and by having a minimum level of expenditure, which is proportionate to its level of activities.

  The following key conditions will need to be satisfied by the retail fund, holder of a Global Business Licence, in order to benefit from the partial exemption:

  (ii) For a retail fund (collective investment scheme), the core income generating activity will consist of investment of funds in portfolios of securities, or other financial assets, real property or non-financial assets; other conditions include the diversification of risks and the possibility for redemption on the request of the holder;

  (iii) the fund should incur a minimum annual level of expenditure of USD 25,000; and

  (iv) the fund should employ (directly or indirectly[11]) at least one suitably qualified person.

  While a domestic fund would typically easily satisfy such conditions, care would need to be taken to ensure that the global scheme is able to achieve sufficient commercial substance in order to satisfy all the prescribed conditions.

  If the global scheme is structured as a limited partnership, there is one notable difference in taxation when compared to a domestic retail fund set up as a limited partnership. A global scheme is able to opt to be taxed as a company (and therefore be opaque for tax purposes).[12] If it opts to be taxed as a company, then the treatment discussed above in relation to companies will be applicable (as set out in section 1.1.1).

[11] Indirect employment means that functions may be outsourced, for example to the local management company.

[12] S. 47(6) ITA.

Other than for the differences above, the global scheme would be taxed exactly like a domestic fund, whether it is formed as a company or protected cell company or limited partnership.
Foreign funds (i.e. funds that are established elsewhere) should not be taxable in Mauritius unless they derive Mauritius-sourced income, have a permanent establishment in Mauritius or are tax resident in Mauritius (by virtue of being managed and controlled in Mauritius). If a non-resident foreign fund derives income from Mauritius, it should only be taxable on its Mauritius-sourced income. If the foreign fund is tax resident in Mauritius, then the tax treatment should be similar to the treatment of a domestic retail fund.
Mauritius has not yet legislated safe harbour provisions like Singapore which recognises the foreign funds managed from Singapore as offshore funds and thus tax exempt in Singapore. Singapore has found that such safe harbour legislation is necessary to boost its fund management industry and the authors of this paper believe that Mauritius would benefit from adopting the same model.

1.1.3. *Taxation of domestically listed exchange-traded funds (ETFs)*

The same tax treatment as outlined in section 1.1.1 will apply.

1.1.4. *Taxation of foreign listed exchange-traded funds (ETFs)*

The same tax treatment as outlined in section 1.1.2 will apply.

1.2. Privately placed investment funds

1.2.1. *Taxation of domestic privately placed hedge funds / alternative investment funds (AIFs)*

The same treatment as outlined in section 1.1.1 will apply.

1.2.2. *Taxation of foreign privately placed hedge funds / AIFs*

The same treatment as outlined in section 1.1.2 will apply.

1.2.3. *Taxation of domestic privately placed private equity (PE) funds and venture capital (VC) funds*

The same treatment as outlined in section 1.1.1 will apply. It is apposite to note that the partial exemption applicable to income of collective investment schemes also applies to income of a closed-end fund. The PE or VC fund would need to be regulated as such in order to avail from the partial exemption from 1 January 2019.

1.2.4. *Taxation of foreign privately placed PE funds and VC funds*

The same treatment as outlined in section 1.1.2 will apply. It is apposite to note that the partial exemption applicable to income of collective investment schemes also applies to income of a closed-end fund. The PE or VC fund would need to be regulated as such in order to avail from the partial exemption from 1 January 2019.

1.3. Special category: closed-end funds and real estate funds

As explained above, it is not practicably possible to offer closed-end funds to retail investors. The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 issued pursuant to the Securities Act allows closed-end funds to be exempt from most of the regulations that apply to domestic retail funds or to retail funds that are global schemes. However, the general tax treatment of closed-end funds is exactly the same as for retail open-ended funds (as set out in sections 1.1.1 and 1.1.2 above).

However, it is important to note that since most closed-end funds domiciled in Mauritius are private equity or venture capital in nature they pay effectively no residual taxes in Mauritius. The reason is simply because most of them make long-term investments into equity or equity-like instruments of target businesses where their ownership in the underlying investments usually exceeds 5%. In addition for credit being granted for withholding taxes suffered overseas, tax credit in respect of foreign taxes suffered on the income out of which dividends are paid to the Mauritius resident entity is also given to any Mauritian tax resident (whether the latter is a fund or not) where the Mauritius resident entity has a holding of at least 5% in the underlying entity.[13] Generally, the significant income generated by a closed-end fund is dividend income (which benefits from the underlying tax credit explained above) or capital gains (which are not subject to tax in Mauritius). Occasionally, such PE or VC closed-end funds may generate interest income on hybrid instruments such as convertible debentures (in which case they will be taxable on such income at the rate of 3% pursuant to the new partial exemption rules).

1.3.1. *Taxation of domestic closed-end funds (widely held or privately placed)*

The same treatment as outlined in section 1.1.1 will apply. It is apposite to note that the partial exemption applicable to income of collective investment schemes also applies to income of a closed-end fund.

1.3.2. *Taxation of foreign closed-end funds (widely held or privately placed)*

The same treatment as outlined in section 1.1.2 will apply. It is apposite to note that the partial exemption applicable to income of collective investment schemes also apply to income of a closed-end fund. In relation to the substance conditions to be satisfied by a closed-end fund, they are broadly the same those of a retail fund, save for the core income generating activity being carried out in or from Mauritius, which will consist of investment of funds collected

[13] Para. 7, Income Tax (Foreign Tax Credit) Regulations 1996.

from sophisticated investors, in portfolios of securities, or in other financial or non-financial assets, or real property.

1.3.3. *Taxation of domestic real estate funds and infrastructure funds (widely held or privately placed)*

The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 issued pursuant to the Securities Act permit the authorisation of specialised funds that can invest in real estate assets directly. As at the time of writing, not many such funds have been authorised. However, there are many investment funds which invest in property owning businesses through equity or debt. In these cases, the type of income generated will be primarily dividend, interest and capital gains (the treatment of which have been discussed at length in section 1.1.1 above). Mauritius does not yet have a real estate investment trust (REIT) regime.

1.3.4. *Taxation of foreign real estate funds / infrastructure funds (widely held or privately placed)*

The same treatment set out in section 1.1.2 above should apply.

Other observations: Tax residence
Pursuant to section 73 ITA, a company is tax resident in Mauritius if it is either incorporated in Mauritius or is centrally managed and controlled in Mauritius. FA 2018 added another criterion for determining tax residence with effect from 1 October 2018: a company whose place of effective management is located outside Mauritius will be considered as being non-resident in Mauritius.

There is no statutory definition of the term "place of effective management" or guidance by the Mauritius Revenue Authority (MRA) as to what would constitute "place of effective management".

Until clear guidance is issued by the MRA on the definition of "place of effective management", there is a technical risk that a fund, while being managed and controlled in Mauritius, may be treated as nonetheless having its place of effective management outside Mauritius.[14] However, we consider this risk to be minimal in practice; we would expect the MRA's interpretation of "place of effective management" to be in line with the substance requirements laid out by the FSC.

Part Two: Taxation of investors investing in investment funds

As noted in part one above, the taxation of investment funds in Mauritius does not normally depend on the regulatory framework of the fund. Similarly, the taxation of investors will not depend on the type of investment fund, but rather on the legal form of the investment vehicle.

[14] For example, if "place of effective management" is interpreted according to the OECD meaning.

As a general observation, investors in an investment fund are not generally taxed differently from the investment in an ordinary business entity. There is no preferential tax rate or tax deferral applicable to investors of investment funds.

In terms of investor categories, we have mainly considered two types of investors: individuals and corporates. There is no special type of tax treatment applicable to corporates which are institutional investors (such as insurance companies or other funds) and any exceptions have been highlighted (for example the new tax regime soon to be applicable to banks regulated in Mauritius).

Transfers of interests in an investment fund in Mauritius (whether or not it is listed) generally do not attract any stamp, transfer or registration duties, subject to special considerations applicable to funds which invest in real estate (see section 2.3 below on real estate funds).

2.1. Widely held investment funds

2.1.1. Taxation of investors investing in domestic widely held retail funds

Since (in practice at least) domestic, widely held funds typically market to Mauritian resident investors (as noted in part one above), we will first consider in this paragraph 2.1.1 the taxation of Mauritius resident investors (both individuals and corporates). The taxation of the resident investors will depend on the legal form of the investment vehicle. We have considered three main types of investment vehicles: company, protected cell companies and limited partnerships. As noted in part one above, investment funds can also be structured as sociétés. The tax treatment applicable to investors in limited partnerships as described below is equally applicable to investors in sociétés.

Mauritius resident investors

We have considered the following most common forms of income which could be received (or deemed to be received) by a resident investor: dividend, interest, capital gains and other income.

If the investment fund is structured as a company (private or public), Mauritius resident investors will be taxed as follows:

A. Dividend income
   - Payments of dividends by the domestic widely held fund to an individual resident investor will not be subject to tax in the hands of the investor.[15] However, if chargeable income of the individual investor (when aggregated with any exempt dividend income) for the relevant tax year exceeds MUR 3,500,000, the amount in excess of MUR 3,500,000 will be subject to a solidarity levy of 5%. This solidarity levy is payable at the time the individual submits his annual tax return.
   - Payments of dividends by the domestic widely held fund to a corporate resident investor will not be subject to tax in the hands of the investor.[16]

[15] Para. (1), Sub-Part B, Part II, Second Schedule ITA.

[16] Para. (1), Sub-Part B, Part II, Second Schedule ITA.

B. Capital gains
   - Any disposal by the investor of their interest in the fund will not be subject to tax in the hands of the investor (whether it is an individual or a corporate).[17]

C. Interest
   - As noted in part one above, although the legislative framework in Mauritius does not prohibit an investment fund from issuing debt securities, these types of investment funds are rare (or non-existent) in practice.
   - For completeness, we note that should a widely held domestic fund issue debt securities, any interest payments to resident investors who are individuals would be subject to tax in Mauritius at the rate of 15%. There is no withholding or TDS (tax deduction at source) on interest payments made to resident investors.
   - If the resident investor is a corporate, from 1 January 2019, 80% of the interest received from the domestic fund would be exempt.[18] This exemption will only apply if the recipient meets the required substance conditions in Mauritius, namely that it
     (i) carries out its core income generating activities[19] in Mauritius;
     (ii) employs directly or indirectly an adequate number of suitably qualified persons to conduct its core income generating activities; and
     (iii) incurs a minimum expenditure proportionate to its level of activities.

D. Other income
   - If the investor derives other types of income from the fund (other than the ones set out in A to C above), such income would generally be taxable at the rate of 15% in the hands of the resident investor (unless the investor is itself a fund and can benefit from the partial exemption set out in section 1.1.1 above).

If the investment fund is structured as a protected cell company, the same treatment as set out in (A) to (D) would be applicable in relation to income received by the resident investors from the relevant cell of the protected cell company.

If the investment fund is structured as a limited partnership, the following treatment will apply: as explained in part one above, a domestic fund which is structured as a limited partnership is treated as being transparent for tax purposes. Pursuant to section 47(2) ITA, it is the partner which is subject to tax on its share of income from the limited partnership.[20] The net income of a limited partner (i.e. the investor) from a domestic retail fund will be deemed to be the share to which he would have been entitled in the income of the limited partnership during an income year if the income had been wholly distributed among the limited partners.

For the purpose of calculating the net income of the limited partner, he shall be deemed to have derived that part of the gross income of the limited partnership and to have incurred that part of the allowable deductions of the limited partnership which bear the same proportion to the gross income or allowable deductions of the limited partnership as his share in the income of the limited partnership bears to the income of the limited partnership.

The taxation of the resident investor will depend on the nature of the income of the limited partnership. If the limited partnership derives income from sources within Mauritius (for example dividends from Mauritius resident companies or gains on disposal of securities in Mauritian companies), then the resident investor will broadly be taxed in the same way

[17] Item 7, Sub-Part C, Part II, Second Schedule ITA.

[18] Para. 7, Sub-Part B, Part II, Second Schedule ITA.

[19] Which would include agreeing on funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks.

[20] S. 47 ITA refers to the tax treatment of "sociétés" and the definition of "société" includes a "limited partnership".

as the resident investor of a company(after deduction of his portion of allowable expenses).

If the limited partnership derives income from sources outside Mauritius, the tax treatment of the resident investor will depend on the nature of the income and on whether the investor is an individual or a corporate. Please see below under the heading "Foreign fund" for the detailed tax treatment of a resident investor receiving foreign-sourced income.

Non-resident investors

If the investment fund is structured as a company or a protected cell company, a non-resident investor will not be subject to any tax in Mauritius on dividends received from the domestic fund or on capital gains on the disposal of his shares in the fund. Any payments of interest may be subject to withholding tax at the rate of 15% unless an exemption applies or reduced rate applies pursuant to a double tax treaty.

If the investment fund is structured as a limited partnership, non-resident investors will generally only be liable on taxable income that is derived from Mauritius. Non-resident investors will have no tax liability in Mauritius on any foreign-sourced income.

Other categories of investors: pension funds and banks

A superannuation fund (broadly a locally regulated pension fund set up by an employer for the benefit of its employees) is exempt from tax. Therefore a superannuation fund will generally not be taxable on any income/capital received from the domestic fund.

A different tax regime will be applicable to Mauritius resident banks from the tax year starting 1 July 2020. Different rates of tax will be applicable to them based on their chargeable income for the year.[21] A bank will not be able to avail from the partial exemption applicable to interest set out under paragraph 2.1.1 (Mauritius resident investors, sub-section C)above.

If the investor is itself another Mauritius fund, then it would in principle benefit from the partial exemption on any income received from the underlying fund (as explained in section 1.1.1 above).

Conclusion

In practice, a resident investor would generally be tax neutral with respect to an investment in a domestic retail fund (except for a corporate investor which invests in the fund as part of its trade). Although interest received is usually taxable, investment funds which issue debt securities are very seldom used in Mauritius.

Similarly, a non-resident investor should generally not suffer any tax in Mauritius with respect to an investment in a domestic retail fund (unless he invested in a debt fund, which is, as mentioned above, very rare).

2.1.2. *Taxation of investors investing in foreign widely held retail funds*

As noted in part one above, a "global scheme" is an investment fund established in Mauritius and which holds a global business licence category 1 (or global business licence from 1 January 2019) which operates in Mauritius. The global scheme targets non-resident investors and makes most of its investments outside Mauritius.

[21] The chargeable income of a bank will be taxed at the rate of 5% and/or 15% depending on various factors.

An investment fund may also be established abroad and target investors based in Mauritius. In this section 2.1.2, we will consider the tax treatment of both types of "foreign" funds.

I. Global scheme

Again, we have considered the three main types of legal form of a global scheme: company, protected cell company and limited partnership. We will consider the tax treatment of non-resident investors first since they are the main target of a global scheme.

Non-resident investors
If the global scheme is structured as a company, the following tax treatment will apply:

A. Dividend income
   - Payments of dividends by the global scheme to a non-resident investor (whether individual or corporate) will not be subject to tax in the hands of the investor.[22] There is no withholding tax on payments of dividends.
B. Capital gains
   - There is no tax on capital gains in Mauritius. In addition, pursuant to item 7, Sub-Part C, Part II ITA, any gains on the disposal of shares or securities by any person will not be subject to any tax in Mauritius.
C. Interest
   - As noted above, debt funds are very rare in Mauritius.
   - For completeness, we note that should a widely held global scheme issue debt securities, as at the time of writing, an interest payment made by a global scheme is exempt in the hands of the non-resident investor if it is paid out of the fund's foreign-sourced income.[23]

The tax treatment of income received by a non-resident investor of a protected cell company in relation to its investment in a cell will be similar to the treatment set out under "Company" above.

If the global scheme is structured as a limited partnership, pursuant to section 47(6) ITA, it has the option to be taxed as a separate entity. On the other hand, a domestic fund does not have this option and will always be tax transparent. Should the limited partnership exercise this option, the investors will be taxed in the same manner as the investors in a company.

If the global scheme does not exercise this option (and therefore remains tax transparent), non-resident investors will have no tax liability in Mauritius on any foreign-sourced income. Since the fund will be a global scheme, it will be investing mainly outside Mauritius and therefore will be unlikely to have locally sourced income. However, should it have any Mauritius-sourced income, the treatment set out above under the heading "Resident investors - company" below will apply.

Resident investors
If the global scheme is structured as a company/protected cell company, the following tax treatment will apply:

[22] Para. (1), Sub-Part B, Part II, Second Schedule of the Income Tax Act (ITA).
[23] Para. 4, Sub-Part B, Part II, Second Schedule ITA. It is expected that this exemption will be amended in due course so as to align the tax treatment of non-resident investors in domestic funds and global schemes.

A. Dividend income
   - Payments of dividends by the global scheme to a resident investor (whether individual or corporate) will not be subject to tax in the hands of the investor, subject to the application of the solidarity levy for individual investors as set out under section 2.1.1 above.
   - There is no withholding tax on the payment of dividends.

B. Capital gains
   - There is no tax on capital gains in Mauritius. Moreover, as set out above, any profits on the disposal of shares by any person will not be subject to any tax in Mauritius.

C. Interest
   - There is no withholding or TDS (tax deduction at source) on interest payments made to resident investors.
   - Any interest payments to resident investors who are individuals would be subject to tax in Mauritius at the rate of 15%.
   - From 1 January 2019, 80% of interest payments made to resident corporate investors would be exempt from tax in Mauritius provided they meet certain prescribed conditions (which have not yet been published at the time of writing).

As explained, if a global scheme is structured as a limited partnership, it has the option to be taxed as an entity. If it exercises this option, the investors will be taxed in the same manner as the investors in a company.

If the global scheme does not exercise this option (and therefore remains tax transparent), income deemed to be received by the resident investor may be taxable in Mauritius. Since the fund will be a global scheme, it will be investing mainly outside Mauritius and therefore will be unlikely to have locally sourced income. Any foreign-sourced income would be taxable broadly in the manner set out under sub-section II (entitled Foreign fund) below. However, should it have any Mauritius-sourced income, the treatment applicable to resident investors in a company will apply.

Conclusion

The tax treatment of investors in a global scheme and in a domestic fund is broadly the same. The key difference between a domestic fund and a global scheme is typically the target investors and the target assets. A global scheme will normally have mostly non-resident investors and seek to invest mainly outside Mauritius.

II. Foreign fund

Since a foreign fund is one which is established abroad, the tax treatment will depend on whether it is tax resident abroad or in Mauritius (or whether it is operating through a permanent establishment in Mauritius).

If the foreign fund is either tax resident in Mauritius or operates through a permanent establishment in Mauritius, then income from the foreign fund will be treated as being locally sourced income. In that case, the tax treatment of resident and non-resident investors will be broadly similar to the taxation of investors in a domestic retail fund (as set out in section 2.1.1 above).

If the foreign fund is not tax resident in Mauritius and is not operating through a permanent establishment in Mauritius, the following treatment will apply:

Resident investors

As an introductory comment, it should be noted that there is no CFC legislation in Mauritius. Resident investors in a foreign resident fund will therefore not be taxed under any specific taxation fund rules or CFC rules.

Resident investors will be treated as receiving foreign-sourced income. The tax treatment will be dependent on the nature of the income and on whether the investor is an individual or a corporate.

A. Foreign dividend income
   - Foreign dividends received by an individual resident in Mauritius are in principle subject to tax at the rate of 15% in Mauritius. The individual investor is in principle able to claim credit for any foreign tax suffered on the dividend (such as withholding tax on dividends).[24] In addition (and as explained in part one above), if the individual holds at least 5% of shares in the foreign fund, he should also be able to claim a credit for "underlying tax" which is foreign tax suffered on the income out of which the foreign dividends are paid. The maximum credit which may be claimed by the individual cannot exceed the tax which would have otherwise been payable in Mauritius.
   - The treatment of investors who are corporates differs. As mentioned in part one above, FA 2018 significantly amended the taxation of certain types of income derived by corporates. With effect from 1 January 2019[25], foreign dividends derived by a resident corporate are subject to an exemption equal to 80% of the gross amount of dividends, provided that the dividend has not been subject to a deduction in the payer's jurisdiction and provided that the recipient satisfied prescribed substance requirements (i.e. complies with its filing obligations under the Companies Act or the Financial Services Act and has adequate resources for holding and managing share participations). It is expected that resident corporate investors would still have the option not to claim this "partial" exemption and instead claim credit for actual underlying tax suffered (as individuals can). A corporate investor would normally only claim credit for actual foreign tax suffered where the underlying tax exceeds 12%.

B. Capital gains
   - Any disposal by the investor of their interest in the fund will not be subject to tax in the hands of the investor (whether it is an individual or a corporate).

C. Interest
   - Interest derived by an individual investor will generally be taxable at the rate of 15% unless an exemption or reduced rate applies under a double tax treaty. The investor would generally be able to claim credit for foreign tax suffered (as explained above under heading (A) – Foreign dividend income).
   - Investors that are corporates are treated differently. FA 2018 significantly amended the taxation of certain types of income derived by corporates. With effect from 1

[24] The Income Tax (Foreign Tax Credit) Regulations 1996.

[25] Para. 6, Sub-Part B, Part II, Second Schedule ITA. Prior to 1 January 2019, three separate tax regimes apply: (i) if the resident corporate is a "domestic" company, it will be taxed at the standard rate of 15% on foreign dividend income, subject to credit available for actual foreign tax suffered; (ii) if the resident corporate is a global business category 1 company, it will not be taxed at a rate exceeding 3% based on the "deemed foreign tax credit rules"; (iii) if the resident corporate is a global business category 2 company, it is exempt on all income. The category 2 company has been abolished by the Finance Act 2018 with effect from 1 January 2019.

January 2019[26], interest derived by a resident corporate is subject to an exemption equal to 80% of the gross amount of interest, provided that the recipient corporate investor satisfies substance requirements as may be prescribed. The recipient will have to show that it carries out its core income generating activities in Mauritius, employs directly or indirectly an adequate number of suitably qualified persons to conduct its core income generating activities and incurs a minimum expenditure proportionate to its level of activities. It is expected that resident corporate investors would still have the option not to claim this "partial" exemption and instead claim credit for actual underlying tax suffered (as individuals can). A corporate investor would normally only claim credit for actual foreign tax suffered where the underlying tax exceeds 12%.

D. Other income
   - If the income received is not capital in nature (see further (B) above), it would be taxable at the rate of 15% in the hands of the resident corporate investor.

For completeness, it should be noted that a resident individual investor would only be taxable in Mauritius on foreign-sourced income to the extent this income is actually remitted or received in Mauritius.[27] In other words, if such income was remitted to a bank account overseas, the resident individual investor will not be subject to tax in Mauritius on such income until such income was remitted to Mauritius.

Non-resident investors
Non-resident investors would generally be exempt from tax in Mauritius on any income received from a foreign fund (unless such foreign fund was tax transparent and the underlying income was derived from sources within Mauritius).

Conclusion
Foreign-sourced income is generally taxable in the hands of resident investors. Since there is no CFC or other similar type of legislation in Mauritius, investors are generally taxable when they receive such income. Income received by individual investors would normally be taxable at the standard rate of 15%, but they may be able to claim credit for foreign tax suffered. They will be required to show proof of the foreign tax suffered. Income received by corporate investors may, under certain circumstances, be subject to a reduced rate of tax of 3% (or alternatively, they may also claim credit for actual tax suffered).

2.1.3. *Taxation of investors investing in domestically listed ETFs*

The taxation of investors in a domestic retail fund is the same whether or not the fund is traded on an exchange. The same treatment as set out in paragraph 2.1.1 above applies.

[26] Para. 7, Sub-Part B, Part II, Second Schedule ITA. Prior to 1 January 2019, three separate tax regimes apply: (i) if the resident corporate is a "domestic" company, it will be taxed at the standard rate of 15% on foreign interest income, subject to credit available for actual foreign tax suffered; (ii) if the resident corporate is a global business category 1 company, it will not be taxed at a rate exceeding 3% based on the "deemed foreign tax credit rules"; (iii) if the resident corporate is a global business category 2 company, it is exempt on all income.

[27] S.5(3) ITA.

2.1.4. Taxation of investors investing in foreign listed ETFs

The taxation of investors in a global retail fund or foreign fund is the same whether or not the fund is traded on an exchange. The same treatment as set out in paragraph 2.1.2 above applies.

2.2. Privately placed investment funds

As explained in part one above, there is no specific regime applying to hedge funds in Mauritius, and the terminology "hedge fund" is not used in legislation. Alternate investment funds which usually target sophisticated investors or high net worth individuals often apply to be categorised as "professional CISs" or "expert funds". Such funds typically take the form of a company (including a protected cell company) or limited partnership.

Similarly, a private equity fund will normally be categorised as a "professional CIS" and can take the form of a company or a limited partnership.

2.2.1. Taxation of investors investing in domestic hedge funds / alternative investment funds (AIFs)

The taxation of investors in a domestic hedge fund will depend on the legal form of the fund and the type of investor. Please refer to paragraph 2.1.1 above.

2.2.2. Taxation of investors investing in foreign hedge funds (high tax jurisdiction)

The taxation of investors in a foreign hedge fund located outside Mauritius will depend on the nature of the income. Please refer to paragraph 2.1.2 above under the heading "Foreign fund".

The taxation of investors in a global scheme will depend on the form of the investment vehicle and the type of investor. Please refer to paragraph 2.1.2 above.

2.2.3. Taxation of investors investing in domestic PE funds / VC funds

The taxation of investors in a domestic PE fund / VC fund will depend on the legal form of the fund and the type of investor. Please refer to paragraph 2.1.1 above.

2.2.4. Taxation of investors investing in foreign PE funds / VC funds

The taxation of investors in a foreign PE fund / VC fund located outside Mauritius will depend on the nature of the income. Please refer to paragraph 2.1.2 above under the heading "Foreign fund".

The taxation of investors in a global scheme will depend on the form of the investment vehicle and the type of investor. Please refer to paragraph 2.1.2 above.

2.3. Special category: closed-end funds and real estate funds

2.3.1. *Taxation of investors investing in domestic closed-end funds (widely held or privately placed)*

The taxation of investors in a domestic closed-end fund will depend on the legal form of the fund and the type of investor. Please refer to paragraph 2.1.1 above.

2.3.2. *Taxation of investors investing in foreign closed-end funds (widely held or privately placed)*

The taxation of investors in a global scheme which is a closed-end fund will depend on the form of the investment vehicle and the type of investor. Please refer to paragraph 2.1.2 above.

The taxation of investors in a foreign closed-end fund located outside Mauritius will depend on the nature of the income. Please refer to paragraph 2.1.2 above under the heading "Foreign fund".

2.3.3. *Taxation of investors investing in domestic real estate funds (widely held or privately placed)*

As explained in part one above, funds which invest directly in real estate are quite rare in Mauritius. Any funds investing indirectly in real estate are typically structured as companies. The taxation of investors will therefore depend on the type of investor. Please refer to paragraph 2.1.1 above.

If the domestic fund invests directly in real estate situated in Mauritius, transfer of shares in the fund may give rise to registration duties and land transfer taxes in Mauritius, subject to any applicable exemption.

2.3.4. *Taxation of investors investing in foreign real estate funds (widely held or privately placed)*

The taxation of investors in a foreign real estate fund located outside Mauritius will depend on the nature of the income. Please refer to paragraph 2.1.2 above. It is apposite to note that if the nature of the income received by the investor is not treated as being a dividend (for example, if it is a property income distribution from a UK REIT), a resident investor would normally be subject to tax in Mauritius on that income at the standard rate of 15% (subject to credit on actual foreign tax suffered).

Part Three: Taxation of investment managers

Investment managers established in Mauritius would normally be required to have a CIS manager license and be regulated by the FSC. It is not always mandatory for a fund established in Mauritius to be managed by a locally regulated CIS manager. A global scheme can normally be managed by an investment manager established elsewhere provided that the FSC is satisfied that it is appropriately regulated as an investment manager in the jurisdiction in which it is established.

The regulatory framework also allows for funds to be self-managed, provided that the

Financial Services Commission is satisfied that the board of directors is able to perform the functions of a CIS manager.

In this part, we consider the following main types of remuneration structures for investment managers of funds established in Mauritius: management or performance fees; distribution on a separate share class to external investors (e.g. carried interest); and director fees in the case of self-managed funds.

Although relatively uncommon, we also briefly consider the taxation of investment managers of funds established elsewhere.

This section deals with the taxation of investment managers which are structured as entities. Although technically possible, it is uncommon for individuals to act as fund managers of investment funds regulated in Mauritius.

3.1. Investment managers managing widely held investment funds

3.1.1. *Taxation of investment managers managing widely held domestic and/or foreign investment funds /UCITS / ETFs*

Taxation of investment managers of domestic retail funds and global retail funds

The most common form of remuneration of a retail fund is the payment of a management fee (typically based on the value of assets under management) and/or a performance fee.

The key difference in the regulatory treatment of investment managers of domestic and global schemes is that a domestic fund is required to have a locally established CIS manager while a global scheme can have a CIS manager established elsewhere (provided certain conditions are satisfied).

We will consider the taxation of investment managers established in Mauritius first. Prior to the FA 2018, the taxation of a CIS manager depended mainly on whether it held a global business licence category 1 or not. A CIS manager which held a global business licence category 1 was generally taxable at the rate of 3% of management/performance fees[28] while a "domestic" CIS manager was taxable at the standard rate of 15%.

As discussed in part two above, FA 2018 introduced some fundamental changes in the taxation of corporates, essentially removing any ring fencing that could be deemed to be harmful tax practices under Action Point 5 of the BEPS proposals.

From 1 January 2019, the taxation of income of a CIS manager in Mauritius holding a Global Licence or otherwise is aligned with the taxation of a CIS manager which only operates in the domestic market and 80% of the income of a CIS manager is now exempt provided that it satisfies some prescribed conditions[29], namely that:

(a) its core income generating activities are carried out in Mauritius, which includes the management of the fund, making decisions on the holding and selling of investments; calculating risks and reserves; making decisions on currency or interest fluctuations and hedging positions; and preparing relevant regulatory or other reports for government authorities and investors;
(b) it incurs a minimum annual expenditure of USD 30,000 in Mauritius; and
(c) it employs (directly or indirectly) a minimum of 1 to 3 employees (depending on the volume

[28] Pursuant to the "deemed foreign tax credit" regime under the Income Tax (Foreign Tax Credit) Regulations 1996.

[29] Item 41, Sub-Part C, Part II, Second Schedule Part II ITA.

of assets under management.[30] In principle, it should be fairly easy for a "domestic" CIS manager managing a domestic retail fund to meet any such substance requirements. A CIS manager holding a global business licence category 1 and managing a global scheme would now be required to satisfy those substance requirements in order to benefit from the 80% exemption on its income.[31]

In an effort to encourage fund managers to move to Mauritius, the legislator introduced a five-year tax holiday on the emoluments of any employee of a company licensed by the FSC and who manages an asset base of at least USD 100m. In order to claim the tax holiday, the employee needed to have been issued with an asset manager or a fund manager certificate. It is important to note that this tax holiday does not apply to the CIS manager entity but to emoluments of its employees.

As mentioned above, the investment manager of a global scheme can be established abroad if the FSC is satisfied that the investment manager is appropriately regulated in its jurisdiction. Such investment manager should not be subject to tax in Mauritius (whether by way of withholding or otherwise) on its management/performance fee from the retail fund.

Taxation of investment managers of foreign retail funds

Locally established investment managers of funds established abroad are still a fairly rare occurrence.

Mauritius does not have any special exemption applicable to investment managers which manage assets of foreign funds (such as the UK investment manager exemption, for example). Therefore there exists at least a theoretical risk of a locally established investment manager creating a taxable presence of the foreign fund in Mauritius. Although ITA does not define the term "permanent establishment", the MRA has traditionally referred to the OECD commentary on the OECD Model Convention when determining whether an entity which is not tax resident in Mauritius has a taxable presence in the country. Typically, an independent investment manager acting in the ordinary course of its business should not be treated as creating a permanent establishment of the offshore fund in Mauritius.

The local investment manager will still be subject to tax at the rate of 3% on the fees received from the foreign retail fund (provided it meets the requisite substance conditions).

3.1.2. *Taxation of investment managers managing ETFs*

Please refer to section 3.1.1 above.

[30] As per FSC Circulars dated 12 October 2018 and 15 October 2018.

[31] For completeness, it is apposite to note that CIS Manager holding a global business company category 1 licence prior to 16 October 2017 will continue to avail from the "deemed foreign tax credit" regime – and therefore be taxable at the rate of 3% on its income - until 30 June 2021.