<u>Mauritius - Substance is the New Form</u>

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Mauritius has recently demonstrated its ongoing commitment to compliance with the highest of standards laid down by the OECD. Responding to the Paris based organisation's ongoing assessment of harmful tax practices, the Mauritian government has enacted reforms to augment its competitiveness and transparency initiatives and cement its image as a reputable financial centre of substance.

The results are tangible - in the latest OECD Peer Review, Mauritius is acknowledged as being innocent of "Harmful Tax Practices" and meeting all of the international requirements in his regard.

Legislative changes

Following its signature in 2017 of the multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting (BEPS), Mauritius has, pursuant to changes made under the Finance Act 2018, amended legislation in two key areas:

1. Amendments to the type and taxation of corporate vehicles established after 1 January 2019; and
2. The clarification of enhanced substance requirements for Mauritian companies wishing to benefit from the country's beneficial tax regime.

Type and taxation of companies

As of 1st January 2019, the Financial Services Commission ("**FSC**") will only issue one type of Global Business Licence company, the Global Business Corporation ("**GBC**").

The Deemed (80%) Foreign Tax Credit (DFTC) regime available to companies holding a Category 1 Global Business Licence will be abolished and the rate of tax for both domestic companies and Global Business Companies (GBCs) will be harmonised at 15%.

In its place, an 80% Partial Exemption Regime will be introduced for certain income streams, subject to pre-defined substance requirements. Existing GBC1 companies, where licenses were issued on or before 16 October 2017, will be grandfathered until 30 June 2021. Licenses issued after 16 October 2017 will be grandfathered until 31 December 2018.

Enhanced substance requirements

As per Section 71(3) of the Financial Services Act 2018, a GBC shall *always*:

i. Carry out the core income generating activities **in or from** Mauritius by:
    a. employing either directly or indirectly a reasonable number of suitably qualified persons to carry out the core activities; and
    b. have a minimum level of expenditure, which is proportionate to its level of activities.

ii. Be managed and controlled from Mauritius[1].
iii. Be administered by a Management Company.

The FSC issued 2 notable circulars explaining the new requirements on the 12th and 15th of October 2018. When determining what is intended by "a reasonable number of suitably qualified persons" and "a minimum expenditure which is proportionate to its level of activities" as described above, the FSC has confirmed that it will make the assessment on a case by case basis. Further, to assist businesses affected by the changes the FSC has devised a set of industry specific indicative guidelines to meeting the enhanced substance requirements.[2]

Future Impact

Mauritius has strengthened its reputation as an international jurisdiction of substance. Its updated fiscal and legislative framework, and financial services infrastructure, provide fertile conditions to grow and sustain cross border businesses, especially those linked with both Africa and Asia.

Such measures will doubtless result in amendments to international taxation treaties and, in the short term, service providers such as asset and fund managers and pension funds will need to revisit the format of their current structures.

As the rest of the world, including several EU members and other "onshore" jurisdictions, grapples with implementing complex BEPS and enhanced substance requirements, Mauritius appears intent on maintaining its leading role in this regard.

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[1] the GBC should:

- Has at least 2 Directors resident of Mauritius of sufficient calibre to exercise independence of mind and judgement;
- Maintains, at all times, its principal bank account with and all transaction through a bank in Mauritius;
- Keeps and maintains, at all times, its accounting records at its Registered Office in Mauritius;
- Prepares its statutory financial statements and causes such financial statements to be audited in Mauritius; and
- Provides for meetings of Directors to include at least 2 directors from Mauritius.

[2] https://www.fscmauritius.org/en/legal-framework/circulars