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Mauritius Global Business Update – GB10

FINANCE (MISCELLENEOUS PROVISIONS) ACT 2009 ("ACT")

The Act was passed by the National Assembly of Mauritius on 21st July 2009 following the budget speech in May 2009 and ushered in several major changes in the legislative framework relevant to global business in Mauritius. Following several recent clarifications by the authorities and guidance notes on the operation of the changes, we bring you the salient features thereof.

Changes brought to the Income Tax Act 1995 (as amended)

1. Definition of the term 'Year' in relation to the fiscal year of a company

Year, for tax purposes and until the Act, was defined as a period of 12 months commencing on 1 July. Following the Act, Year now means a period of 12 months commencing on 1 January, with effect from 1 January 2010. The concept of assessment year has been discontinued in favour of the calendar year basis. This is applicable for both corporate income tax and personal taxation.

2. Income to be expressed in Mauritius currency

Before

The accounts of global business entities carrying a Category 1 Global Business Licence (GBL1) are expressed in foreign currency. Any tax payable in Mauritius had to be converted into Mauritius currency at the exchange rate in force at the date on which the return of income was submitted to the Director-General of the Mauritius Revenue Authority (MRA).

After

- The currency conversion for the tax payable must now be made at the exchange rate in force at the date of payment of tax, i.e instead of the date on which the return is submitted.
- GBL1 entities which prepare accounts in British Pounds Sterling, US dollars or Euros can now settle their Mauritius tax liability in the same currency. This is applicable for both annual returns and the APS (see later).

3. Return of income by companies

A brief recap of the previous practice and the current status…

Until the Finance Act 2007 which became effective on 01 July 2007, 30 September was the deadline date for filing of income tax returns in Mauritius for all accounting years ending on a date other than 30 June and 31 January was the deadline filing date for accounting years ending on 30 June. 30 September 2008 was the last time that the previous 30 September deadline filing date operated and applied to entities with accounting years ending between 01 July 2007 and 31 December 2007.

Subsequent to the Finance Act 2007, every company, whether or not it is a taxpayer, is required to file its annual tax return not later than six months from the end of the month in which its accounting year ends.

A significant change of the Act is that all companies deriving gross income and exempt income exceeding Mauritius rupees **10 million ($ 0.3 million)** in an income year will have to submit their returns and pay taxes **electronically**. The previous threshold was >Mauritius rupees 30 million.

Electronic filing is done using the Mauritius Network Services (MNS) system, a system developed by the Government of Mauritius through a request to an E-Filing Service Centre to do the electronic filing on their behalf.

GWMS is pleased to inform you that it is an approved E-Filing Service Centre and will therefore enable the global business entities under its administration and to which the above is relevant to comply with the law in Mauritius.

<u>Exemption</u>

The provisions of S 116 shall not apply to non Mauritius tax resident GBL1 or GBL2 trusts of which the settlor and beneficiary is a non-resident throughout an income year or to a purpose trust settled under the Trusts Act 2001 and whose purpose is carried out outside Mauritius.

A declaration of non residence must be filed with the MRA by the trust within 3 months after the expiry of its income year to avail of the above exemption.

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4. Advance Payment System (APS)

Turnover exceeding Mauritius rupees 100 million

The Finance Act 2007 had introduced a new tax payment system, the Advance Payment System (APS), whose aim is to more closely match the tax payments flow of a company to its profits flow. Companies were required to effect quarterly provisional tax payment on basis of the chargeable income of the preceding tax return.

Accordingly, besides the annual return, companies are also required to file, under the APS, quarterly APS Statements and to pay tax in accordance thereof. These requirements apply as from 01 July 2008 for companies whose turnover in respect of the year of Assessment 2008-2009 exceeds Rs 100 million.

It is to be noted that companies that had unrelieved losses in the preceding income year may opt not to file the APS Statement.

Turnover under Mauritius rupees 100 million

From 01 July 2009, the APS applies to all companies.

Who is liable to APS?

APS is applicable to companies, unit trust schemes, collective investment schemes, trusts (other than trusts having made a declaration of non-residence), non-resident societies (general partnerships) and any GBL1 société which has opted to be liable to income tax.

Calculation of APS

The income tax payable in respect of an APS Quarter is calculated, at the option of the company, as follows:

(i) 25% of the tax liability which was payable in respect of the immediately preceding accounting year; OR
(ii) The standard corporate tax rate of 15% * the APS Quarter's taxable income, if any, including any loss brought forward from the previous quarter of the accounting year immediately preceding that quarter.

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What is an APS Quarter?

The APS Quarter of a company depends on its accounting year and is as follows:

APS Quarter	**Income For Period**
First	3 months commencing on the first day of the accounting year
Second	3 months immediately following the end of the first quarter
Third	3 months immediately following the end of the second quarter

The deadline date for the payment of tax for an APS Quarter is the working last day of the quarter following the APS Quarter i.e assuming the accounting year starts on 1 January, the first APS Quarter runs to 31 March and the deadline payment date of any tax due under APS is 30 June.

5. Basis of assessment on commencement of business

A person engaged in business and required to submit a return shall in the commencement year of income, submit a return not exceeding 18 months (pre Act, the period could not exceed 12 months) ending with the date of the annual balance of his accounts.

6. Return of income in respect of approved return date

The approved date of return is now 31 December. For any other accounting date, the MRA must be notified accordingly. Companies will have new approved return dates as follows:

Existing approved return date ending between	Deemed income year ending on
1 January and 30 June	31 December of preceding year *(For example approved return date 31 March 2010 – return deemed to have been made in relation to income year ending 31 December 2009)*
1 July to 31 December	31 December following that return date *(For example approved return date 30 September 2010 – return deemed to have been made in relation to income year ending 31 December 2010)*

7. Other notable changes

- The Act amends the Income Tax Act to enable the Minister (of Finance) to enter into arrangements with the government of a foreign country for the exchange of information in respect of any person not resident in Mauritius

- A new provision has been added whereby the Minister (of Finance) may enter into arrangements with the government of a foreign country for the purposes of providing assistance in the collection and recovery of foreign tax. This implies that where there is no treaty, now under domestic legislation, there will be arrangements for recovery of foreign tax.

<u>Changes brought to the Financial Services Act 2007</u>

- A GBL2 corporation must now file with the Financial Services Commission once in every year a financial summary in the form set out in the Ninth Schedule to the Companies Act which in effect is a basic summary of the accounts without any notes.

- Exchange of information under condition of confidentiality, in relation to a GBL1 or GBL2 corporation could previously only be made to the Bank of Mauritius and any other institution which performs in a foreign country functions similar to those of the Commission under this Act. The Act now substitutes the Bank of Mauritius by a public sector agency, enabling such exchanges to be made to a wider number of organizations like anti corruption organisations, albeit in all confidentiality.

<u>Changes brought to the Financial Reporting Act 2004 (FRA)</u>

1. Changes in definition

The terms "financial statement" and "auditing standards" are now defined as follows:

- "financial statements" has the meaning assigned to it in the International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB). The previous definition described the constituent reports comprising the financial statement;

- "auditing standards" means the auditing standards adopted by the International Auditing and Assurance Standards Board (IAASB). The previous definition could also comprise standards issued by the Financial Reporting Council of Mauritius, the regulator for audit matters, amongst others.

2. Foreign auditor

- Until the present change in the FRA, there was no need for a foreign auditor to be authorized or licenced by the Financial Reporting Council (FRC) to act as the auditor of a GBL1 company.

  The amendment now requires that the foreign auditor be authorized or licenced to be or to act as an auditor by the regulatory body of the foreign jurisdiction of the foreign auditor. He must now obtain the prior written approval of the FRC and comply with the FRC's procedures

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Other

GWMS is associated with SAB&T Incorporated, Chartered Accountants (SA) ("SAB&T"), www.sab-t.co.za , an almost 40 directors strong financial services provider with six offices located in the major centres of South Africa and a full fledged member of Nexia International, an international and widely known group of independent accountants, which ranks 9th worldwide and is represented in 97 countries and with 620 member offices globally.

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