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CHARTERED ACCOUNTANTS (S.A.)

Mauritius Global Business Update 12

FINANCE (MISCELLANEOUS PROVISIONS) ACT 2011 (“ACT”)

The Act became effective on 15th December 2011 following the budget speech of 04 November 2011 and one of the major changes is the re-introduction of the tax free status of dividends paid by a Mauritius company to Mauritius residents. Such dividends were and still are exempted from income tax when paid to Global Business Licence (GBL) entities or to non residents. Following recent clarifications by the authorities and guidance notes on the operation of the changes, we bring you the salient features thereof. This update is not meant to be and is not an exhaustive list of all changes brought about by the Act. Only those changes which, in our opinion, may be of interest to international clients are included here. The effective date of the changes mentioned hereinunder is 1 January 2012 save where specified otherwise.

1. Dividend – Definition & Taxation

- 1.1. The definition of dividend has been amended to provide to that any distribution to a beneficiary of a trust shall be deemed to be a dividend made to the beneficiary.
- 1.2. The Solidarity Income Tax on dividends and interest income which was introduced in the 2010 Finance Act has now been abolished.
 - 1.2.1. Previously an individual having taxable income, interest and dividends income above Mauritius Rs 2 million had to pay a solidarity tax of 10% of dividends and interest income as from the income year 2011;
 - 1.2.2. This solidarity tax is no longer applicable from income year 2012.
- 1.3. Sub-Part B of Part II (Exempt income) of the Second Schedule of the Income Tax Act has been amended to clarify that dividends or other distributions paid by a GBL company to another GBL company are exempt from income tax in Mauritius.



2. Gains on immovable property

The current Minister of Finance has reversed a measure introduced by his predecessor in the 2010 budget relating to the taxation of gains on immovable property in Mauritius.

Accordingly, income tax on the gains derived from sale of immovable property introduced in the 2010 fiscal year at the rate of 10% for individuals not engaged in the business of property dealings and 15% in other cases has been abolished on transactions effected as from 5th November 2011.

3. Tax deduction at Source

Tax deduction at source has now been extended, amongst others, to services provided by doctors, dentists, attorneys, solicitors, barristers and legal consultants. The payer is required to deduct income tax from the amount at the rate of 3 % and remit same to the Mauritius Revenue Authority.

This provision shall come into operation on 1 March 2012.

4. Protected Cell Company (PCC)

The PCC is now defined in the Income Tax Act similarly to its definition in the Protected Cell Companies Act.

The definition of Company has been amended to include a cell of a PCC.

A PCC is now required to file financial statements with the FSC for each cell and pay tax on a cell basis. Effectively, each cell shall have to file its own income tax return and be liable to income tax in respect of its own income.

Where a cell of a PCC owes income tax, the Mauritius Revenue Authority may, for the recovery of the income tax due, have recourse to cellular assets as well as non-cellular assets of the PCC.

The effective date for the income tax changes is the year of assessment commencing 1 January 2013 and in respect of every subsequent year of assessment.



5. Global Business income may be expressed in & tax paid in foreign currencies

- 5.1. GBL1 entities which prepare accounts in British Pounds Sterling, US dollars or Euros could earlier settle their Mauritius tax liability in the same currency. This is applicable for both annual returns and the APS.
- 5.2. The list of foreign currencies stated above has now been extended to include Singapore dollars, South African Rands, Swiss francs or such other foreign currency as may be approved by the Mauritius Revenue Authority. This is over and above the Euros, GB pounds sterling and US dollars.

6. Return of income by companies

The Act now confirms that a GBL1 corporation is also required to submit its income tax return and pay taxes electronically, irrespective of turnover.

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.

Exemption

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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7. Advance Payment System (APS)

The Finance Act 2007 had introduced a new tax payment system, the APS, whose aim is to more closely match the tax payments flow of a company to its profits flow. Companies are required to effect quarterly provisional tax payment on basis of the chargeable income of the preceding tax return or on actual chargeable income of the previous quarter.

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 or Limited Partnership which has opted to be liable to income tax.

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

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

Changes under the Act

1. The provisions relating to APS have been amended to include the cells of a PCC
2. It is not required to file an APS Statement in respect of an APS quarter where in the accounting year immediately preceding the commencement of that APS quarter, the company's gross income did not exceed Mauritius Rupees 2 million or it had no chargeable income.
3. A new penalty in respect of income tax underpayments has been introduced:
 - 3.1. Where, following an assessment or otherwise, the MRA finds that the amount of tax payable iro APS exceeds the amount of any tax actually paid in accordance with a particular APS Statement by more than 35 per cent of the amount of tax payable, the company shall, at the time of submission of its annual return, pay, in addition to the tax underpaid, a penalty representing 25 per cent of the amount in excess of the amount representing 35 per cent.
 - 3.2. The penalty does not apply where, in respect of the APS quarter in an income year:
 - 3.2.1. the taxpayer has opted to compute APS at 25 per cent of the tax paid for the previous accounting year instead of on the actual chargeable income of the quarter; or
 - 3.2.2. where the amount in excess is solely attributable to income derived in the period immediately following the end of the third APS quarter of the income year.



8. Taxation of Director's remuneration

The Act clarifies that the taxation of a board director's remuneration is on an accrual basis, i.e. shall be deemed to have been received by the director in the income year in which such remuneration is charged in the income statement of the company.

For note, directors' fees are subject to a withholding tax of 15% at source.

9. Liability of "Principal Officer" of a private company to pay VAT

The Act introduces a provision which renders the Principal Officer of a private company accountable and liable personally for non-payment of VAT to MRA as in the case of Income Tax.

"Principal Officer" means the executive director, or any other person who exercises or who is entitled to exercise or who controls or who is entitled to control, the exercise of powers which would fall to be exercised by the Board of directors.

10. Current provisions of the Income Tax Act –

The following is a brief refresher of the current existing provisions of the Income Tax Act in respect of interest, royalty & gains which are EXEMPT INCOME.

11.1. Interest payable on:

- 11.1.1. a balance maintained in a bank in Mauritius by an individual who is not resident in Mauritius;
- 11.1.2. call and deposit accounts held with any such bank by a corporation holding a Category 1 Global Business Licence;
- 11.1.3. a savings or fixed deposit account held by an individual or a société with any bank or a non-bank deposit taking institution under the Banking Act of Mauritius;

11.2. Interest paid to a non-resident, not carrying on any business in Mauritius

- 11.2.1. by a corporation holding a Category 1 Global Business Licence out of its foreign source income; or
- 11.2.2. by a bank in Mauritius insofar as the interest is paid out of gross income derived from its banking transactions with non-residents and corporations holding a Global Business Licence.



- 11.3. Royalty payable to a non-resident
- 11.3.1. by a corporation holding a Category 1 Global Business Licence out of its foreign source income;
- 11.3.2. by a bank in Mauritius insofar as the royalty is paid out of gross income derived from its banking transactions with non-residents and corporations holding a Global Business Licence; or
- 11.3.3. by a trust.
- 11.4. Interest, rents, royalties, compensations and other amounts paid by a company holding a Category 2 Global Business Licence to a non-resident.
- 11.5. Gains or profits derived from the sale of units or of securities by a company holding a Category 1 Global Business Licence
- 11.6. Gains or profits derived from the sale of shares, debt obligations or other securities of a company holding a Category 1 Global Business Licence or Category 2 Global Business Licence by a non-resident.

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