



## Mauritius Global Business Update 26

### **FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”, A US LEGISLATION)**

*The Republic of Mauritius (“Mauritius”) has recently concluded 2 FATCA implementation agreements (the “Agreements”) with the United States of America (“US”). The Agreements signed on 27 December 2013 by Mauritius & the US (collectively, the “Countries”) are: (1) a **Model 1 Inter-governmental Agreement (“IGA”)** and (2) a **Tax Information Exchange Agreement (“TIEA”)**. The TIEA facilitates the exchange of information relevant to the administration and enforcement of the Countries’ domestic laws concerning taxes.*

#### **1. What is FATCA?**

- 1.1. FATCA was signed into US law on 18 March 2010 and is aimed at foreign financial institutions (FFIs) and other financial intermediaries to prevent tax evasion by US citizens and residents through the use of offshore accounts. FATCA puts in place mechanism to identify US persons behind foreign financial holdings and to communicate their corresponding investment information, e.g. their name, address, account number, account balance and income derived from such investments to the US Inland Revenue Service (“IRS”).
- 1.2. If an FFI does not itself enter into an agreement with the IRS or alternatively if there is no inter-governmental agreement in place to ensure FATCA reporting to the IRS, all relevant US-sourced payments, such as dividends and interest paid by US corporations, will be subject to a 30% withholding tax payable to IRS. The same 30% withholding tax will also apply to gross sale proceeds from the sale of relevant US property. No foreign tax credit is available against such FATCA tax.
- 1.3. To avoid such crippling high withholding tax and ease the reporting burden on FFI and other impacted entities, Mauritius has entered into an IGA which requires Mauritius FFIs to report information/documents directly to the Mauritius Revenue Authority which then exchanges the information with the IRA pursuant to the TIEA.
- 1.4. On 12 July, 2013, the US Treasury Department and the IRS postponed withholding under FATCA to 1 July, 2014.
- 1.5. We will inform you in due course of the effective date of the TIEA and the IGA.



- 1.6. Mauritius is the first African country (and 20th globally) to sign such Agreements with the US authorities and is testimony to Mauritius's strong commitment to remain a "clean" and transparent jurisdiction.
- 1.6.1. Worthy of note is that the Global Forum on Transparency and Exchange of Information for Tax Purposes has recently rated Mauritius as 'largely compliant' with the international standards on transparency and exchange of information.
- 1.6.1.1. Mauritius has scored the same rating as the US, the United Kingdom, Germany, Italy, Singapore and Hong Kong.

## **2. Who is impacted by FATCA?**

- 2.1. FATCA impacts virtually all non US entities, both financial and non-financial, directly or indirectly, receiving most types of US source income and US entities, both financial and non-financial, that make payments of most types of US source income to non US persons.
- 2.2. Accordingly, where Mauritius entities receive US source income and/or where US entities pay US source income to Mauritius entities, FATCA would have operated to withhold the 30% withholding tax had Mauritius not entered into the IGA with the US.

## **3. What is an FFI?**

- 3.1. Generally non US entities such as banks, broker/dealers, insurance companies, hedge funds and private equity funds are considered FFIs.
- 3.2. GWMS (similarly to all Management Companies like us) qualifies as an FFI and therefore as a withholding agent and would itself, absent the IGA, be required to directly report certain information to the IRS about the US accounts or accounts of certain foreign entities with substantial U.S. owners under our administration.
- 3.3. However, given the IGA, GWMS would only have to report (when the IGA and TIEA become effective) to the Mauritius Revenue Authority which would then relay the required information/documents to the IRS.



### ***International network***

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