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Let’s talk

For a deeper discussion of how this matter might affect your business, please contact:

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Efficient cash and treasury management through Mauritius

In brief

With cash being a rare commodity around the world, businesses are focusing on efficient treasury management. In the context of Africa, the Mauritius International Financial Centre is well placed to facilitate cross-border financing activities.

In detail

Mauritius has made important and necessary reforms to the global business sector. The Blueprint for the Financial Services sector has also been completed and a steering committee has been established for a timely and effective implementation of the Blueprint.

In the wake of the Action Plan on Base Erosion and Profit Shifting (BEPS), there have been several recent changes to Mauritius’ domestic tax law to comply with the proposals made by the Organisation for Economic Co-operation and Development.

The focus of this Tax Alert is on the recent tax developments impacting groups conducting cross-border financing activities through Mauritius.

Global Businesses

The Deemed Foreign Tax Credit (“FTC”) regime available to companies holding a Category 1 Global Business License (“GBC1”) is no longer available since 1 January 2019, except for grandfathering provisions.

A partial exemption regime is available for companies (except banks) whereby 80% of certain type of income such as interest and foreign source dividends are exempted from income tax.

The partial exemption regime will only be available upon satisfaction of pre-defined substance requirements. In the context of interest income, the Mauritius company should:

- carry out its core income generating activities in Mauritius;
- employ directly or indirectly a reasonable number of suitably qualified persons to conduct the core income generating activities; and
- incur a minimum level of expenditure in Mauritius proportionate to its level of activities.

The core income generating activities in respect of interest income include functions like agreeing the financing terms, setting the duration of the financing, monitoring and revising agreements as well as managing associated risks.

Further, The Financial Services Commission has issued guidelines in order to determine what constitutes a reasonable number of employees or the minimum level of expenditure required.

On 16 August 2019, the Income Tax Regulations were amended and now provide *inter alia* that the core income generating activities may be outsourced to third party service providers, subject to:

- the company is able to demonstrate adequate monitoring of the outsourced activities;
- the outsourced activities are conducted in Mauritius; and
- the economic substance of service providers is not counted multiple times by multiple companies when evidencing their
- own substance in Mauritius.

The amendments apply from 1 July 2019.

Interest-free loans

The Mauritius tax rules require *inter alia* that the net income from financial transactions involving related parties should be determined on the arm's length basis.

The Budget Speech 2020 indicated that the legal provision relating to the arm's length test will be "fine-tuned to remove any doubt or uncertainty about its application".

We have seen cases where the Mauritius Revenue Authority is questioning the arm's length nature of interest-free loans advanced by Mauritius companies.

It follows that groups should consider the arm's length nature of interest-free loan funding arrangements.

Back-to-back loans

Certain groups have historically structured back-to-back loans to foreign companies via two Mauritius companies. A spread of interest income (determined with reference to arm's length principles) would then be subject to tax in Mauritius.

Prior to the tax amendments, it would have been possible for a GBC1 company to pay interest to a non-resident company without paying interest withholding tax ("WHT").

Following the recent tax amendments, interest payments to a non-resident made out of income received from another Mauritius company will now suffer WHT. The domestic interest WHT rate is 15%, subject to any relief available under an applicable double tax agreement.

In light of the above, groups should be reconsidering the appropriateness of funding structures involving back-to-back loans via two Mauritius companies.

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