Economic Substance Requirements - Mauritius

December 2019

The Economic and Financial Affairs Council of the European Union (the "**EU Council**") recently removed Mauritius from EU's grey list of non-cooperative jurisdiction for tax purposes. The conclusion of the EU Council, which is reviewed twice a year, contains two annexes; annex 1, the black list, and annex 2, the grey list. The removal from the grey list follows the amendments brought to global business sector of Mauritius in 2018 and 2019.

These changes notably include the replacement of the deemed tax credit by the partial tax exemption and additional substance requirements which global business companies are required to meet. In this communication, we present a descriptive summary of the key features of newly enacted substance requirements in Mauritius, of which we highlight the following stages:

Stage 1 : Tax residency criteria in Mauritius

Stage 2 : Imposition of substance requirements on Mauritian resident vehicles

Stage 3 : Monitoring mechanism for substance

Stage 1 – Tax Residency criteria in Mauritius

It is important to note that the definition of "tax residency" of companies has been amended in both 2018 and 2019.

Prior to 2018, a company incorporated in Mauritius or which has its Central Management and Control (**CMC**) in Mauritius would be considered as tax resident in Mauritius. Effective 01 July 2019, where a company's CMC is outside Mauritius, the company will not be considered as tax resident of Mauritius, regardless of being incorporated in Mauritius.

This could subsequently jeopardise companies obtaining Tax Residency Certificates which would in turn prevent these companies from availing of treaty benefits.

Stage 2 – Imposition of substance requirements on Mauritius resident entities

Effective 01 January 2019, Mauritius replaced the deemed tax credit by the partial tax exemption, subject to grandfathering provisions.

To avail of the newly introduced partial exemption which is available on certain income streams such as dividend and interest income, companies are required to satisfy the substance requirements in Mauritius.

The substance requirement test can be split in two parts for a better comprehension.

Test 1: Substance requirements

In addition to certain substance requirements that global business companies are required to meet such as having at least two local directors on the board of the company, maintaining a principal bank account in Mauritius, global companies will also be required to, amongst others;

— Carry out their Core Income Generating Activities (**CIGA**) in or from Mauritius (refer to test 2 below); and

— Incur a minimum level of expenditure and employ directly or indirectly an adequate number of qualified persons.

Test 2: Core Income Generating Activities

Activities which qualify as CIGA will depend on the business activity of a company. For example, CIGA for a company deriving interest income (excluding banks) would include agreeing funding terms, setting the terms and duration of any financing, as well as monitoring and revising any agreements and managing any risks in Mauritius.

Stage 3 – Monitoring mechanism for substance

The law has been amended to provide the local tax authority information, through changes in the tax returns, which would assist in determining whether the newly introduced substance requirements are satisfied. The main amendments made to the tax returns are on the next page:

— Number of hours of work dedicated to manage the activities of the company;

— Provide the name of the tax representative;

— Confirmation as to whether the CIGA are outsourced;

— Specify if the entity is a member of MNE group with total consolidated annual revenues in preceding year of EUR 750million or more; and

— Whether the substance of the outsourcing provider (employees, expenditure and premises) is used multiple times by multiple primary entities that outsource to the same service provider.

Other changes:

1. Deposition of the Ratified Instrument with the OECD

As per our tax alert issued October 2019, Mauritius deposited its instrument of ratification for the BEPS Multilateral Instrument (**MLI**) with the OECD on 18 October 2019. As a result, the MLI will enter into force on 01 February 2020.

Out of its 46 Double Taxation Avoidance Agreements (**DTAAs**), Mauritius has nominated 44 Covered Tax Agreements (**CTAs**), which excludes the India and Australia DTAAs. From the 44 CTAs, 18 countries have not signed the MLI and 2 countries (Jersey and Tunisia) have signed the MLI but have not chosen Mauritius as a CTA.

This implies that the following 24 DTAAs chosen by Mauritius (Barbados, Belgium, China, Croatia, Cyprus, Egypt, France, Germany, Guernsey, Italy, Kuwait, Luxembourg, Malaysia, Malta, Monaco, Pakistan, Qatar, Senegal, Seychelles, Singapore, South Africa, Sweden, UAE and UK) will have to be interpreted in conjunction with the provisions adopted by Mauritius under the MLI.

2. Tax Holidays

With a view to encouraging substance in Mauritius, the Government has introduced certain tax holidays as follows:

Income derived by a company from:	Period of tax exemption (Years)
Bunkering of low Sulphur Heavy Fuel Oil	Four
Operation of an E-Commerce platform	Five
Operation of a Peer-to-Peer Lending Platform	Five
Development of a marina	Eight
Intellectual property assets which are developed in Mauritius	Eight

How KPMG can assist your business

Impact analysis

An assessment of risks, e.g. CMC, substance requirements, along with identification of any gaps and our recommendations.

Assess the impact of the MLI on your business.

Compliance

Assist our clients in complying with applicable local tax reporting obligations, i.e, the additional information requested on tax returns.

Up-to-date information

Assist clients in remaining updated on ongoing changes in the Mauritius tax regime.

We hope you find this document useful. Feel free to contact us.

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