KPMG

Tax Alert

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Mauritius introduces controlled foreign company legislation

Following the Mauritian Budget speech in June this year, the Mauritius Finance Bill 2019 provides guidelines on the newly introduced Mauritian controlled foreign company ("CFC") legislation which is said to be effective with retrospective effect from 1 July 2019.

Which companies are tainted?

Essentially, Mauritius will consider a company to constitute a CFC where that company is not tax resident in Mauritius and where more than 50% of the total participation rights in that company are held directly or indirectly by a Mauritian tax resident company or together with its associated enterprises (essentially representing a 25% interest in the capital structure, voting rights or entitlement to profits).

In addition, any permanent establishment of a Mauritian tax resident company that exists outside of Mauritius will also constitute a CFC.

Associated Mauritian tax implications

Where a Mauritian resident company carries on business through a CFC and it is considered by the Mauritius Director-General that the non-distributed income of that CFC arises from non-genuine arrangements which have been put in place for the

essential purpose of obtaining a tax benefit, that income shall be deemed to form part of the chargeable income of the Mauritius resident company.

An arrangement or a series thereof shall be regarded as non-genuine to the extent that the CFC would not own the underlying assets or would not have undertaken the risks which generate all, or part of its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

A tax benefit in this instance means the avoidance or postponement of the liability to pay income tax or the reduction in the amount thereof.

Accordingly, the income of the CFC shall be determined in such manner as may be prescribed.

The abovementioned rules shall not apply to a CFC where in an income year:

- accounting profits are not more than EUR 750 000 (albeit the equivalent amount in MUR), and non-trading income is not more than EUR 75 000;
- accounting profits amount to less than 10% of the operating costs for the tax period. To this end the operating costs shall not include the cost of goods sold outside the country where the CFC is considered tax resident and the payments made to associated enterprises. It is worthwhile to note that it is not a requirement that the payments made to associated enterprises should only be in respect of the goods sold; or
- the tax rate in the country of tax residence of the CFC is more than 50% of the tax rate in Mauritius.

What does this mean for you?

South African taxpayers with offshore structures that involve a Mauritian tax resident intermediary holding company, that holds more than 50% of the total participation rights in a non-resident Mauritian company, will now be subject to a double layer of CFC legislation. Proper consideration should therefore be given to any unintended tax leakage and additional tax compliance requirements.

More wide spreading, when compared to South African CFC legislation, is the fact that a permanent establishment of a Mauritian company would also constitute a CFC.

Equally important for South African taxpayers is to determine whether there is an opportunity to optimise foreign tax credits in the hands of the South African shareholder in respect of tax payable in Mauritius resulting from this newly introduced CFC legislation.

For more information, contact us:

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