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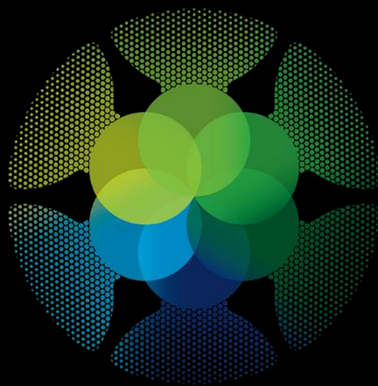

Mergers and Acquisition Alert
Delivering Clarity

Mauritius Budget 2018 – Overview of key proposals relevant from an Indian standpoint

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Overview

On 14 June 2018, the Mauritius Government presented the Budget for 2018-19. The overall objective of this budget is to further transform Mauritius into a high-income, inclusive economy.

One of the key proposals relevant from an Indian standpoint are the proposed reforms in the taxation of global business companies. The measures include (1) replacement of the existing deemed foreign tax credit system by a new system of granting an 80% income-level exemption in respect of specified income streams and (2) the phasing out of Global Business License Category 2 (GBL 2) regime.

We have discussed below these 2 key proposals and their impact on investment holding structures involving India.

Background of the Mauritius corporate tax regime

The corporate tax rate in Mauritius is 15%, which is applicable to both Mauritius domestic companies and certain offshore companies.

The offshore company regime is known as the Global Business License (GBL) regime and has 2 categories – Category 1 and Category 2.

An offshore company holding a Category 1 GBL (GBL1 Co) is treated as a resident of Mauritius and is subject to the above Mauritius corporate tax rate of 15%. A GBL1 Co is eligible to claim benefits under the tax treaties that Mauritius has entered into with overseas jurisdictions, including foreign tax credit in respect of its foreign sourced income. Historically, GBL1 Cos have been extensively used for making investments into India.

On the other hand, an offshore company holding a Category 2 GBL (GBL2 Co) is treated as a non-resident from a Mauritius standpoint and is also not allowed to conduct business with Mauritius residents. A GBL2 Co is exempt from Mauritius corporate tax, and being a non-resident, is not allowed to claim benefits under the tax treaties that Mauritius has entered into with overseas jurisdictions. The key benefits of a GBL2 Co over a GBL1 Co are in the regulatory context e.g. ease of setting up, cost of maintenance, flexibility around appointment of local directors, dispensation of other formalities such as audit of financial statements, lower disclosure requirements etc. Given the lack of tax treaty benefits, GBL2 Cos are not very commonly set up from an Indian inbound or outbound investment standpoint.

Overhaul of the deemed foreign tax credit system

The existing deemed foreign tax credit system allows a GBL1 Co to claim foreign tax credit as under:

- Tax paid on the foreign sourced income in the overseas jurisdiction (including underlying tax credit in case of dividend income from a foreign subsidiary if the GBL1 Co owns 5% or more stake in the foreign subsidiary); or
- Where the details of the foreign tax paid are not provided to the Mauritius tax authorities, a deemed foreign tax credit of 80% of the Mauritius tax chargeable on the foreign sourced income on a presumptive basis.

The working of the existing deemed foreign tax credit system is illustrated below:

Taxable income (entirely sourced)	100
Mauritius tax (15%)	15
Less: Deemed foreign tax credit (80% of 15)	(12)
Tax payable in Mauritius	**3**

The existing deemed foreign tax credit system is proposed to be done away with from December 31, 2018 and replaced by a new system of granting an 80% income-level exemption in respect of specified income streams, subject to certain conditions.

The new 80% income-level exemption will be available in respect of the following income streams:

- Foreign sourced dividend
- Profits attributable to an overseas PE
- Interest income
- Royalty income
- Income from provision of specified financial services

In order to claim such exemption, a GBL1 Co would be required to meet the substantial activities requirements prescribed by the Mauritius Financial Services Commission (FSC). It has also been clarified that the existing system of granting of foreign tax credit based on the actual tax paid in the overseas jurisdiction will continue to be available to a GBL1 Co.

The new 80% income-level exemption system is illustrated below:

Qualifying income	100
80% income-level exemption (80% of 100)	(80)
Taxable income	20
Tax payable in Mauritius (15%)	**3**

Revised Global Business License (GBL) regime

The GBL 2 regime is proposed to be dismantled, and the GBL 1 regime would continue, which would then be renamed as the GBL regime.

Accordingly, it is proposed that no new GBL 2 licenses will be issued from January 1. 2019 (the GBL2 Cos which were issued the license before October 16, 2017 would continue to enjoy the benefit of the existing GBL 2 regime till June 30, 2021).

Our comments

The changes should not impact the tax outflow for a Mauritius investment holding company under the new income-level exemption system vis-à-vis the existing deemed foreign tax credit system, as long as it meets the substantial activities requirements prescribed by the Mauritius FSC. However, there could be investment holding companies (both on the India inbound and outbound side) whose effective tax rate may be lower than 3% due to availing foreign tax credit on an actual basis. In such scenario, where the investment holding company meets the prescribed conditions, a potential inability to avail foreign tax credit on an actual basis (which is possible under the existing system), may increase the tax outflow in Mauritius once the new system becomes effective. This is a critical aspect on which more clarity is needed. A related aspect is whether the existing substance requirements would continue to apply for GBL1 Cos for the purposes of claiming the new income-level exemption or if new conditions would be prescribed.

Disclaimer: This alert is solely based on the limited information on these proposals as available in the Budget speech of the Mauritius Prime Minister.

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