



Mauritius Global Business Update 48

THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2021 (THE “ACT”)

We have the pleasure to bring to you the salient features of the Act which was adopted on 05 August 2021, following the budget speech read in the Mauritius Parliament on Thursday 11th June 2021 by the Dr the Hon Renganaden Padayachy, Minister of Finance, Economic Planning and Development.

Only those measures which, in our opinion, may be of interest to an international audience are included here. You are strongly recommended to seek specific advice before acting on any information contained herein.

1. Income Tax Act

1.1. Repeal of Sec 46(3) Declaration of non-tax residence by Trusts and Foundations

- 1.1.1. A trust or foundation could file a declaration of non tax residence and be exempt from income tax where its settlor / founder and all beneficiaries are non resident in Mauritius or where the trust holds a Global Business Licence under the Financial Services Act 2007;
- 1.1.2. With effect from 1 July 2021, trusts and foundations shall not be able to submit the declaration of non tax residence;
- 1.1.3. Trusts and Foundations set-up before 30 June 2021 shall benefit from a grandfathering period up to year of assessment 2024-2025 (income year 2023-2024). The grandfathering will not apply to certain assets/incomes such as intellectual property assets and income from specific assets or projects.

GWMS comments

1. The repeal of the declaration of non-tax residence has caused much confusion among principally foreign observers and those whose trusts are in Mauritius. In an attempt to clear such confusion, the Mauritius Revenue Authority issued a STATEMENT OF PRACTICE (SP 24/21) - TRUSTS & FOUNDATIONS, dated 24 August 2021 (SoP) – see Annexure A;



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2. Background to the reason for the repeal of the declaration of non-tax residence:
 - 2.1. In line with international tax reforms internationally, Mauritius has also reformed its tax regime over the last few years. These reforms were assessed by both the Paris based Organisation for Economic Co-operation and Development (OECD) Forum on harmful Tax Practices (FHTP) and the EU Code of Conduct Group (COCG). The FHTP & the COCG have confirmed that they are satisfied that Mauritius does not have any harmful features in its tax regimes;
 - 2.2. Nevertheless, international tax reforms are continuing to evolve and in order to adhere to international standards, the option of the declaration of non-tax residence has been abolished;
 - 2.3. It is important to note that Mauritius is not on any OECD or EU list on tax matters.**
3. In essence, clause 6.2 of the SoP clarifies that for a trust to be tax resident in Mauritius, ALL of the conditions stated below must prevail. In the event that ANY ONE of these three conditions is absent, the trust's Central Management and Control (CMC) will be deemed to be **outside** Mauritius.
4. The conditions for CMC to be in Mauritius are:
 - 4.1. The trust is administered in and a majority of the trustees are resident in Mauritius; **AND**
 - 4.2. The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust; **AND**
 - 4.3. A majority of the beneficiaries or the class of beneficiaries appointed under the terms of the trust are resident in Mauritius.
5. Mauritius trusts set up by clients based outside of Mauritius will therefore henceforth not be tax resident in Mauritius.
6. The consequence of the non-tax residency means that the foreign income of such Mauritius trusts will not be taxable in Mauritius. This outcome is same as what was achieved by filing the declaration of non tax residence thus re-establishing the previous status quo.
7. For avoidance of doubt, we clarify that any trust funds donated or loaned from outside Mauritius to the trust whose CMC is outside Mauritius and which are invested by the trust outside Mauritius will not be taxed in Mauritius on any resulting foreign income.



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8. In our view, the grandfathering provision (see SoP) is a non event as even without such provision, a trust whose CMC is outside Mauritius would not be taxed on its foreign income. To qualify for the declaration previously the CMC needed to be outside Mauritius!
9. Non-resident trusts would however be taxable on Mauritius sourced income at 15%. A trust is required to submit an annual return of income, whether it is tax resident in Mauritius or not.
10. An unintended consequence of the SoP is that trusts which were previously tax resident in Mauritius by virtue of being administered in Mauritius and having a majority of their trustees in Mauritius are now deemed to be non-resident. Consequently, such trusts can no longer benefit under the tax treaty network of Mauritius.
11. A discretionary trust is a blocker for the CFC Rules of South Africa and other countries which have similar CFC Rules. In our view, a Mauritius tax resident trust is a more efficient blocker. However, given the SoP, most trusts of international clients will now be non resident.
 - 11.1. It is in the interest of international clients to ensure that their trusts have maximum substance in Mauritius by virtue of their administration being fully carried out in Mauritius and having their corporate trustee /majority trustees in Mauritius in order to compensate for the change in tax residency rules;
 - 11.2. Trusts which have their substance in Mauritius may still be effective to counter CFC Rules but you are recommended to proceed with even more caution now. However, it is important to note that trusts are also subject to anti-avoidance attribution rules such as Sec 7 and Sec 25 of the South African Income Tax Act which are akin to CFC Rules but applicable to trusts. We strongly recommend that cognizance be taken of these attribution rules when structuring Mauritius trusts to avoid falling foul of these tax provisions in South Africa. *GWMS can assist in this regard to enable you to remain on the right side of the law!*
12. Another yet possibly unintended consequence of the SoP is that the non-residency of such trusts would also impact their CRS and FATCA reporting. We will revert in greater detail in a future update about this aspect.
13. **Despite the changes, the Mauritius trust or a trust settled under foreign law but administered in Mauritius and having a majority of trustees in Mauritius remains very attractive as an efficient tax planning tool, provided proper structuring is done, and as an investment vehicle.**



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1.2. Sec74(1)(f) Derivation of income from Mauritius

1.2.1. It is now clarified that only income derived from investment in shares in a *company resident in Mauritius* will be deemed as income derived from Mauritius.

GWMS Comments

Based on the S74 (1)(f) clarification, taxability of dividends in Mauritius will be as follows;

Note: An Authorised Company (“AC”) is incorporated in Mauritius but as it is not managed and controlled in Mauritius, it is therefore not tax resident and pays no tax in Mauritius

- Dividend paid by a foreign company incorporated outside Mauritius (“FC”) to an AC – As FC is not tax resident in Mauritius, the dividend is not derived from Mauritius and is considered to be a foreign dividend. The foreign dividend is not taxable in Mauritius in the hands of the AC because the AC is not tax resident and pays no tax in Mauritius;
- Dividend paid by a foreign company incorporated outside Mauritius but registered in Mauritius (“FC”) to a GBC – As FC is tax resident in Mauritius, the dividend is derived from Mauritius and is considered to be a Mauritius sourced dividend. Such a dividend is exempt in the hands of the recipient and is thus not taxable in the hands of the GBC.
- Dividend paid by a Global Business Company (“GBC”) to an AC – As the GBC is tax resident in Mauritius, the dividend is derived from Mauritius and is considered to be a Mauritius sourced dividend. Such a dividend is exempt in the hands of the recipient and not taxable in the hands of the AC.
- Dividend paid by a payor AC to another payee AC – As the payor AC is not tax resident in Mauritius, the dividend is not derived from Mauritius and is considered to be a foreign dividend. It is not taxable in the hands of the payee AC because the payee AC is not tax resident and pays no tax in Mauritius;
- Dividend paid by an AC to a Global Business Company (“GBC”) – As the AC is not tax resident in Mauritius, the dividend is not derived from Mauritius and is considered to be a foreign dividend. However since the GBC is tax resident in Mauritius, the dividend is taxable in the hands of the GBC.



1.3. Sec75 Application of arm's length test (the "ALT")

1.3.1. The ALT applies generally to any business or other income earning activity carried on in Mauritius:

- 1.3.1.1. which is controlled by a non-resident; or
- 1.3.1.2. is carried on by a non-resident company; or
- 1.3.1.3. by a company held in majority by a non resident; or
- 1.3.1.4. where the Mauritius Revenue Authority considers that the business or activity has not been conducted at arm's length.

1.3.2. The amendment clarifies that the ALT shall apply to any business or other income earning activity carried on *in or from Mauritius* (GBCs are therefore impacted) *since the commencement of this Act* (i.e with retroactive effect!).

1.4. Extension of tax holidays from 5 to 10 years for Family Offices, Fund and Asset Managers.

1.4.1. Employees managing an asset base and holder of an asset manager, fund manager or asset and fund manager certificate on or after 1 September 2016;

1.4.2. The threshold of the asset base has been reduced from USD100 Million to USD50 Million.

1.5. Partial exemption

1.5.1. The exemption is now extended to:

- 1.5.1.1. Income derived by Investment dealers licensed or approved by the FSC;
- 1.5.1.2. Income derived by companies engaged the leasing of locomotives and trains including rail leasing.

1.6. Personal Taxation

1.6.1. Social Contribution and Social Benefits Act ("SCSB")

1.6.1.1. The Contribution Sociale Généralisée(CSG) Regulations 2020 issued in September 2020 has been repealed and is now replaced by the SCSB, w.e.f 1 September 2021;



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1.6.1.2. The SCSB replaced the previous social contributions which every employee in Mauritius needed to mandatorily contribute via PAYE to the National Pensions Fund;

1.6.1.3. CSG is applicable on the basic wage or salary + additional remuneration excluding overtime, performance bonus and allowances + end of year bonus (*new*)

1.6.2. Training levy (Human Resource Development Act)

1.6.2.1. W.e.f 01 July 2021, the training levy was increased back to 1.5% (from the previous 1% in the 2021 income year) of total basic salary;

1.6.3. Board of public companies – appointment of at least one woman and two independent directors

1.6.3.1. Public companies holding a Global Business Licence or approved as an Authorised Company are dispensed from the above requirement.

2. Financial Services Act

2.1. Issue of shares by holders of any license issued by FSC (sec 23)

2.1.1. Share issues of less than 5% are also dispensed from the requirement to seek FSC approval. A notification to FSC would suffice;

2.1.2. Note that previously the concerned section 23 only referred to transfer of shares.

2.2. Certificate of good standing for licensees under the Financial Services Act 2007

2.2.1. Law practitioners and accounting firms may now request a certificate of good standing from FSC on behalf of, and on the written consent of, the holder of a licence issued by the Commission, including the holder of a Global Business Licence or an Authorised Company.



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3. Companies Act

3.1. Certificate of current standing for a GBC and an Authorised Company (AC)

3.1.1. Previously a request to the Registrar of Companies to issue the certificate could only be made by a shareholder, officer, management company or registered agent of that company. Such a request may now be made by the registered agent or representative of that company or a person qualified to act as Secretary of that company under the Companies Act.

4. Work and live in Mauritius

4.1. A new Premium visa was introduced in October 2020 to attract certain categories of visitors to Mauritius who may wish to relocate to Mauritius for a maximum period of one year to live and work from Mauritius. One of the qualifying criteria to be eligible for the visa is that the main place of business and source of income and profits of the applicant must be outside Mauritius;

4.2. The Finance Act 2021 has clarified that where an individual holding a premium visa derives income for work performed remotely from Mauritius, that income shall be deemed to be derived by him in Mauritius only when it is remitted in Mauritius, effective as from 01 November 2020. In essence, unless remitted to Mauritius, such visa holder is not subject to Mauritius taxation on his foreign income earned while working from Mauritius.

4.2.1. Money spent in Mauritius through the use of foreign credit or debit cards by Premium Visa holders are not deemed to have been remitted to Mauritius

4.3. The following changes were brought to immigration and other laws:

4.3.1. Under the previous regime, it was imperative for OP applicants to enter Mauritius on a business visa. This requirement is now waived and a non-citizen will now be eligible for an OP irrespective of his visa category when entering Mauritius.

4.3.2. A new 10 year family Occupation Permit (OP-10F) was introduced for those contributing USD 250,000 or its equivalent to the COVID-19 Projects Development Fund. The OP-10F grants residence for 10 years to the applicant and family members and entitles them to work in Mauritius;



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- 4.3.3. Foreign carers and maids can now qualify for work permits;
- 4.3.4. The various categories of OPs also qualified dependent children of OP holders for a residence visa but limited their age to 24 years. This restriction is now lifted;
- 4.3.5. OPs in the professional categories are now valid for 10 years (previously 3 years) renewable;
- 4.3.6. Monthly basic salary for professional OPs has been lowered to MUR30K for fund accounting and compliance services by companies licenced by the FSC and for applicants having a minimum of 3 years experience;
- 4.3.7. An OP holder in category of professional now has the flexibility to switch job without the need to file a new application, subject to conditions;
- 4.3.8. Spouse of OP holder will be exempted from applying for a separate OP;
- 4.3.9. An OP or PR holder has a deadline date of June 2022 to acquire one plot of serviced land not exceeding 2,100 m². This deadline date has been extended to June 2024;
- 4.3.10. A non citizen may now also qualify for a PR permit upon acquisition of an apartment (G+2 floors) at a purchase price of USD375K or more;
- 4.3.11. All 10 years PR permits will be automatically renewed to cover a 20 year period;
- 4.3.12. A PR permit holder who was granted the permit in the category of investor, professional or self-employed may apply to be granted a PR permit under the category of retired non-citizen for the remaining period of its validity, provided that he has a monthly disposable income of USD 1,500 or its equivalent in any other hard convertible foreign currency;
- 4.3.13. A person will cease to be a resident where he/she has ceased to satisfy the requirements under the Integrated Resort Scheme, Real Estate Scheme, Invest Hotel Scheme, Property Development Scheme, Smart City Scheme or other conditions as may be prescribed.



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About us

GWMS is an experienced Management Company incorporated in Mauritius and licensed by the Financial Services Commission to provide Global Business services to businesses worldwide. One of the core competencies and activity of GWMS is the provision of a full range of Fund Administration services to offshore funds set up in Mauritius or elsewhere.

The board of GWMS comprises mainly of Chartered Accountants of calibre and experience in diverse sectors encompassing accounting, audit, management, global business, international and local taxation among others. GWMS is able to handle back office work as well. Our staff comprises a mix of fully qualified accountants, near qualified accountants, law graduates and administrative clerks.

More information is available on www.gwms.mu

International network

GWMS is the sole member for Mauritius GMNI International (www.gmni.com), an association of legally independent accounting firms. Formed in the 1970s, GMNI is a well-established association of quality professional accounting firms which provide accountancy, audit, tax advisory and business consultancy services to businesses worldwide – with the same care and skill you find locally. GWMS's clients can thus benefit from cutting edge international tax advice through our GMNI linkage along with having a global reach.



To obtain further information on our services, please contact:

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STATEMENT OF PRACTICE (SP 24/21)

TRUSTS & FOUNDATIONS

(sections 46, 49A, 73A, 116 and 161A of the Income Tax Act)

1.0 Objective

This statement of practice seeks to provide clarification on the application of sections 73A and 116 of the Income Tax Act (ITA) pertaining to Trusts and Foundations in light of the amendments brought to sections 46 and 49A of the ITA by the Finance Act (FA) 2021.

2.0 Definition

2.1 Trusts and foundations fall within the definition of “*company*” which is defined in section 2 of the ITA as “*a body corporate, other than a local authority, incorporated in Mauritius or elsewhere; and includes a non-resident société, a cell of a protected cell company, a foundation, a trust or a trustee of a unit trust scheme;*”.

2.2 Trusts in Mauritius are governed by the Trusts Act and in accordance with section 2 of the ITA, a “trust” means a trust recognised under the laws of Mauritius. A foundation, on the other hand, has the same meaning as in the Foundations Act.

2.2.1 Parties in a trust

Basically there are 3 main parties involved in a trust namely, settlor, trustee and beneficiary. According to the Trusts Act:

(1) A Settlor means a person who provides trust property or makes a testamentary disposition on trust or to a trust.

(2) A Trustee means a person who holds or has vested in him, or is deemed to hold or have vested in him, property of which he is not the owner in his own right, with a fiduciary obligation to hold, use, deal or dispose of it -

(a) for the benefit of any person (a “beneficiary”), whether or not yet ascertained or in existence;

(b) for any purpose, including a charitable purpose, which is not for the benefit only of the trustee; or

(c) for such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

(3) A Beneficiary means a person, whether natural or corporate, entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised.

2.2.2 Qualified number of trustees

As required under the Trusts Act, the number of trustees of a trust shall not exceed four of whom, at least one shall be a qualified trustee. A *'qualified trustee'* means a management company or such other person resident in Mauritius as may be authorised by the Financial Services Commission to provide trusteeship services.

2.3 Foundations in Mauritius are governed by the Foundations Act. Following registration with the Registrar of Foundations in Mauritius, a foundation is issued with a Certificate of registration and is thus deemed a body corporate.

2.3.1 Parties in a foundation

Basically there are 3 main parties involved in a foundation namely, founder, executor and beneficiary. According to the Foundations Act:

(1) A Founder / Testator means a person who endows a Foundation with its initial assets and one founder who shall be the testator.

(2) An Executor means a person named in a will, or nominated by the testator, to carry out the directions of the will; and includes, in the case of a foreign will, the executor's duly appointed lawful agent.

(3) A Beneficiary means a person -

(a) who is entitled to benefit under a Foundation; or

(b) in whose favour a power to distribute any Foundation property may be exercised.

3.0 Liability to Tax

3.1 As a general rule, the income of Mauritius Trusts and Foundations is subject to income tax at the rate specified in Part IV of the First Schedule to the ITA, that is 15%.

3.2 Prior to FA 2021 where, in an income year, a trust

- (i) of which the settlor is a non-resident or holds a Global Business Licence under the Financial Services Act;
- (ii) of which all the beneficiaries appointed under the trust are, throughout an income year, non-residents or holds a Global Business Licence under the Financial Services Act;
- (iii) which is a purpose trust under the Trusts Act and whose purpose is carried out outside of Mauritius;

it could file a declaration of non-residence with the Director-General within three months after the expiry of the income year and it was exempt from income tax in respect of that year.

3.3 Similarly, prior to FA 2021, a foundation of which

- (i) the founder is a non-resident or holds a Global Business Licence under the Financial Services Act; and
- (ii) all the beneficiaries appointed under the terms of a charter or a will are, throughout an income year, non-resident or hold a Global Business Licence under the Financial Services Act,

it could deposit a declaration of non-residence for any income year with the Director-General within 3 months from the expiry of the income year and it was exempt from income tax in respect of that year.

4.0 Grandfathering

4.1 Following the repeal of subsection (3) of section 46 and subsections (2) and (3) of section 49A of the ITA, the above exemption will no longer be available except for trusts and foundations which were set up before 30 June 2021. These entities can avail of the exemption under section 161A (71) and (72) of the ITA. This provision is

applicable up to year of assessment 2024/2025. Therefore, trusts and foundations having an income year starting on or after 31 December 2024 will not benefit from this grandfathering provision.

4.2 During the grandfathering period, the grandfathered Trust/Foundation cannot benefit from the exemption in respect of new assets/activities such as intellectual property assets acquired and income from specific assets or projects started after 30 June 2021.

5.0 Trusts and Foundations resident in Mauritius

5.1 The definition of residence is set out in section 73 of the ITA. With regard to Trusts and Foundations, the relevant extract of section 73 is reproduced hereunder:

“73. Definition of residence

(1) For the purposes of this Act, "resident", in respect of an income year, when applied to –

(d) a trust, means a trust –

(i) where the trust is administered in Mauritius and a majority of the trustees are resident in Mauritius; or

(ii) where the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed;

(da) a Foundation, means a Foundation which –

(i) is registered in Mauritius; or

(ii) has its central management and control in Mauritius;”

5.2 Trusts and foundations which are considered to be resident in accordance with the definition of residence set out in section 73 of the ITA will be liable to tax in Mauritius on their worldwide income at the rate specified in Part IV of the First Schedule to the ITA.

6.0 Non-resident Trusts and Foundations

6.1 A company incorporated in Mauritius is non-resident if it is centrally managed and controlled outside Mauritius in accordance with section 73A of the ITA which reads as follows:

'73A. Companies treated as non-resident in Mauritius

(1) Notwithstanding section 73, a company incorporated in Mauritius shall be treated as non-resident if it is centrally managed and controlled outside Mauritius.

(2) A company referred to in subsection (1) shall submit a return of income as required under section 116.'

On the basis that trusts and foundations fall within the definition of 'company' in accordance with section 2 of the ITA, they are deemed non-resident if their central management and control takes place outside Mauritius, in line with the provisions of section 73A of the ITA.

Accordingly, it is apposite to define what would constitute '*central management and control*' for a trust and a foundation.

6.2 Determination of Central Management and Control

(a) Trust:

A trust would have its central management and control in Mauritius when:

- (i) The trust is administered in Mauritius and a majority of the trustees are resident in Mauritius;
- (ii) The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust; and
- (iii) a majority of the beneficiaries or the class of beneficiaries appointed under the terms of the trust are resident in Mauritius.

(b) Foundation:

A foundation would have its central management and control in Mauritius if:

(i) the founder is resident in Mauritius; and

(ii) a majority of the beneficiaries appointed under the terms of a charter or will are resident in Mauritius.

7.0 Income derived from Mauritius

A Trust or Foundation which, throughout an income year, is non-resident, shall be liable to tax only on its chargeable income attributable to its Mauritian source income at the rate specified in Part IV of the First Schedule to the ITA.

8.0 Exempt Body

A foundation or trust whose exclusive purpose or object is of a charitable nature will be exempt from tax in Mauritius in accordance with Item 1 of Part I of the Second Schedule to the ITA.

9.0 Partial Exemption

Any foundation or trust may claim partial exemption on such categories of income specified under Sub Part B and Sub Part C of the Second Schedule to the ITA subject to satisfying the conditions prescribed relating to substance of their activities.

10. Annual Return of Income

Any foundation and trust shall in accordance with section 116 of the ITA submit an annual return of income.



S.Lal

Director-General, Mauritius Revenue Authority

24 August 2021