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The Finance (Miscellaneous Provisions) Act 2021

Introduction

The Finance (Miscellaneous Provisions) Act 2021 ("FA 2021") received Presidential assent on 5th August 2021. This newsletter highlights the key fiscal measures brought to the Income Tax Act 1995 ("ITA").

Income derived from Mauritius

Pursuant to Section 74(1)(f) of the ITA, "income derived from investment in shares, debentures or other securities in Mauritius" was considered as income derived from Mauritius. FA 2021 clarifies that income derived from investment in shares in a company resident in Mauritius will be treated as income derived from Mauritius, effective as from the Year of Assessment ("YOA") starting 1 July 2022.

> *The clarification brought by FA 2021 means that dividend received from an Authorised Company ("AC") will be considered as foreign source dividend income and hence will be taxed at 15% in Mauritius, subject to any credit or partial tax exemption. We also note that the residency criteria was not included in the case of income derived from debentures or other securities. The MRA may therefore treat income derived from debentures or other securities in an AC as income derived from Mauritius, even though the AC is a non-resident entity. It would therefore be useful for the MRA to clarify its position on this.*

Application of arm's length test

The FA 2021 amends the arm's length provision of the ITA, such that it now applies to "any business or other income earning activity carried on in Mauritius or from Mauritius". The FA 2021 makes no reference to a specific effective date for this change but mentions that the change will take effect as from the commencement of the ITA.

> *This amendment confirms that the arm's length provision applies to all business or income generating activity carried in or from Mauritius, irrespective of the tax residency of the income earner.*
>
> *In the case of a non-resident carrying on business from Mauritius, it means that the non-resident may be subject to the arm's length principle both in Mauritius, as the country of source, and in the country of tax residence.*
>
> *The retroactive effect of this amendment means that it may apply to transactions which took place at a time when this piece of legislation did not exist. We understand that the MRA may invoke this section on a taxpayer during the open years of assessment and it may apply to cases under tax audit or pending in court. We are of the view that the retroactive effect of this legislative change is not fair and could be subject to institutional challenges.*

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Manufacturing Companies

- A reduced tax rate of 3% is provided on income derived by a manufacturing company engaged in medical, biotechnology or pharmaceutical sector and holding an Investment Certificate issued by the Economic Development Board ("EDB"). This is effective as from the YOA starting 1 July 2022.

  100% tax credit may be claimed on capital expenditure on the acquisition of patents, incurred by the above-mentioned manufacturing company, in addition to annual allowance. Unused tax credits may be carried forward for 5 consecutive income years, subject to conditions. This has taken effect as from 1 July 2021.

  However, where double deduction is claimed on the cost of patent acquisition under Section 67K of the ITA, the newly introduced tax credit cannot be claimed.

- 15% tax credit may be claimed on the cost of the new plant and machinery incurred by a manufacturing company during the period 1 July 2020 to 30 June 2023, in the year of acquisition and in each of the 2 subsequent income years. Any unutilised tax credit may be carried forward for 10 consecutive income years.

- 110% tax deduction is allowed to manufacturing companies whose annual turnover exceeds Rs 100 million on any expenditure for the direct purchase of products manufactured locally by SMEs. This is effective as from 1 July 2021.

- Any unrelieved tax credit of 15% which is provided on capital expenditure on new plant and machinery incurred by a manufacturing company may be carried forward for 10 years

Education Sector

Effective from the YOA starting 1 July 2022, the chargeable income of a higher education institution registered under the Higher Education Act set-up in Mauritius will be taxed at a reduced rate of 3%.

Innovation Sector

- Effective 1 July 2021, double tax deduction is available on:
  i. expenditure incurred on the acquisition of specialised software and systems; and
  ii. expenditure incurred on market research and product development for the African market;
  subject to no annual allowance being claimed.

- The existing double tax deduction with respect to qualifying expenditure on research and development has been extended till June 2027.

Tax Holidays

- Effective 1 July 2022, the tax holiday provided to Family offices and Fund and Asset Managers has been extended from 5 to 10 years.

- Effective from the income year starting 1 July 2021, the tax exemption available to 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 has been extended to 10 years. The threshold of the asset base has also been reduced from USD100 Million to USD50 Million.

- Companies incorporated on or after 1 July 2021 and holding an Investment Certificate as issued by the EDB may benefit from 8 years' tax holiday.

- FA 2021 has repealed the below tax holidays, except for companies which benefited from these tax holidays previously:

Income derived by a company from	Tax holiday
Bunkering of low Sulphur Heavy Fuel Oil	4 years
Provision of health services	5 years
Fishing activities	8 years
Manufacture of pharmaceutical products, medical devices and high-tech products	8 years
Food processing activities	8 years
Manufacturing of automotive parts	8 years
Development of a marina	8 years
Inland aquaculture	8 years
Branch campus of an institution which ranks among the first 500 tertiary institutions worldwide	8 years
Manufacturing of nutraceutical products	8 years

Trusts and Foundations

Until 30 June 2021, trusts and foundations which made a declaration of non-residence were exempt from income tax. The FA 2021 abolished such exemption subject to grandfathering provisions. Trusts and foundations set up before 30 June 2021 are grandfathered up until the YOA 2024-2025 and can still benefit from the income tax exemption, subject to renewing their declaration of non-residence, if required.

We note that the grandfathering provisions will not apply on income derived by a trust or foundation from certain intellectual property assets or such specific assets acquired or projects started, after 30 June 2021, as the Director-General may determine.

FA 2021 leaves it to the Director-General to determine the nature of "specific assets or projects". We hope that the MRA interprets this term as relating to intellectual property assets mentioned in this new sub-section of the ITA and not as any asset or any project. We understand that a Practice Note will be issued by the MRA shortly to provide more clarity on taxation of trusts and foundations.

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Partial Exemption Regime

As from the YOA starting 1 July 2022, the 80% partial tax exemption will also be available on income derived by investment dealers and from activities in relation to leasing of locomotives and trains, including rails leasing.

> *We understand that the substance requirements, consisting of carrying on the core income generating activities ("CIGA") in Mauritius and satisfying the minimum employment and expenditure requirements will be applicable for investment dealers and locomotives and trains leasing businesses. We hope that the MRA will provide more clarity on what constitute CIGA and the minimum threshold for employment and expenditure.*

Individual Tax

Additional exemption in respect of dependent child pursuing undergraduate course

Effective from the income year starting 1 July 2021, an individual can claim an addition exemption in respect of a dependent child pursuing undergraduate course up to a maximum of MUR 225,000, irrespective of the place of study of the child and total income of the household.

Relief for medical insurance premium or contribution

Effective from the income year starting 1 July 2021, the maximum allowable deduction for medical insurance premiums has been increased as follows:

- From MUR 15,000 to MUR 20,000 for self; and
- From MUR 10,000 to MUR 15,000 for each dependent.

Similarly, an individual may benefit from an additional exemption of up to MUR 30,000 in respect of:

- Donations made to Charitable Institutions; and
- Contributions made to approved personal pension schemes approved by the Financial Services Commission under the Insurance Act for the provision of a pension for himself.

Contribution to National COVID-19 Vaccination Programme Fund

Effective from YOA starting 1 July 2021, individuals who contribute or donate to the National COVID-19 Vaccination Programme Fund during the income year ended 30 June 2021 will be eligible to deduct the amount donated from their taxable income when filing their income tax returns. Any unrelieved deduction in an income year can be carried forward for the next 2 consecutive income years.

Income derived by holders of Premium Visa

A premium visa holder may be subject to tax in Mauritius on income derived from Mauritius. As from 1 November 2020, income derived for work performed remotely from Mauritius shall be deemed to be derived in Mauritius when it is remitted in Mauritius.

Money spent in Mauritius through the use of a foreign credit or debit card will not constitute as income remitted in Mauritius.

On the other hand, money deposited in a Mauritian bank account will be subject to tax in Mauritius, unless the premium visa holder makes a declaration that tax has been paid on that income in his country of origin or residence.

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- Tax Controversies and Litigations
- Tax Advisory
- Tax Training
- FATCA and CRS
- Accounting
- Insolvency

Should you have any query, please liaise with your usual contact person at Andersen in Mauritius or write to us on info@mu.Andersen.com

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