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STATEMENT OF PRACTICE SP 24/21: Trusts & Foundations

The Finance (Miscellaneous Provisions) Act 2021 (“FA 2021”) brought important changes to the taxation regime of trusts and foundations in Mauritius. These changes came as a surprise to the financial services industry since they were not announced in the Budget Speech 2021/2022, creating a degree of uncertainty for those trusts and foundations which so far could submit a declaration of non-residence and be exempt from tax in Mauritius.

To provide clarifications however, the Mauritius Revenue Authority (“MRA”), on 24 August 2021, issued its Statement of Practice (“SP 24/21”) on Trusts and Foundations.

This newsletter highlights the main changes brought to the taxation regime of trusts and foundations and the clarifications provided by the MRA.

Taxation of Trusts and Foundations prior to FA 2021

Resident trusts and foundations are subject to income tax in Mauritius at the headline rate of 15%, subject to any exemptions or tax reliefs.

However, qualifying trusts and foundations were eligible to file an annual declaration of non-residence, which allowed them to benefit from an income tax exemption, subject to satisfying the below conditions:

Trust	Foundation
<ol style="list-style-type: none"> 1. Settlor is a non-resident or holds a Global Business Licence; and 2. (i) All the beneficiaries are non-residents or hold a Global Business Licence; or (ii) The Trust is a purpose trust under the Trusts Act 2001 and whose purpose is carried out outside Mauritius. 	<ol style="list-style-type: none"> 1. Founder is a non-resident or holds a Global Business Licence; and 2. All the beneficiaries are non-residents or hold a Global Business Licence.

Changes brought by FA 2021

The FA 2021 repealed the tax exemption provided to non-resident trusts and foundations effective from the Year of Assessment (“YOA”) commencing 1 July 2022. A grandfathering period has however been granted for trusts and foundations set up before 30 June 2021, and which meet the above conditions as applicable. Grandfathered trusts and foundations may still file a declaration of non-residence and be exempt from tax until the YOA 2024-2025.

It is to be noted that the grandfathering provisions do not apply to income derived by a trust or foundation from certain intellectual property assets acquired or newly created after 30 June 2021, or to income derived from such specific assets acquired or projects started after 30 June 2021, as the Director-General may determine, which will be taxable in Mauritius.

Intellectual property asset has been defined to include any copyright of literary, artistic or scientific work; patent, trademark, design or model; plan; or secret formula or process.

Clarifications brought from SP 24/21

The above changes left some room for interpretation with regards to the taxation regime of trusts and foundations, particularly in relation to when a trust or a foundation would be considered as non-resident in Mauritius.

Section 73 of the Income Tax Act 1995 (“ITA”) provides for the following conditions for a trust or a foundation to be considered as resident in Mauritius:

Trust	Foundation
<ol style="list-style-type: none"> 1. Administered in Mauritius and a majority of the trustees are resident in Mauritius; or 2. Settlor was resident in Mauritius at the time the instrument creating the trust was executed. 	<ol style="list-style-type: none"> 1. Registered in Mauritius; or 2. Central management and control is in Mauritius.

As per section 73A of the ITA however, a company incorporated in Mauritius, but which has its central management and control outside of Mauritius is considered as non-resident in Mauritius for tax purposes. The MRA, through SP 24/21, clarified that Section 73A would also apply to trusts and foundations, which fall under the definition of a company under the ITA, so that a trust or a foundation which has its central management and control outside Mauritius would be considered as non-resident.

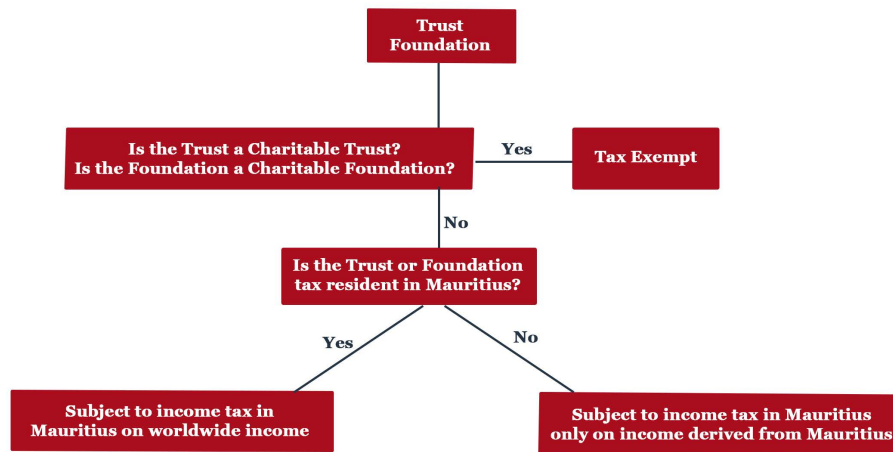
SP 24/21 further went on to clarify what would constitute central management and control in Mauritius as follows:

Trust	Foundation
<ol style="list-style-type: none"> 1. The trust is administered in Mauritius and a majority of the trustees are resident in Mauritius; 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 3. A majority of the beneficiaries or the class of beneficiaries appointed under the terms of the trust are resident in Mauritius. 	<ol style="list-style-type: none"> 1. The founder is resident in Mauritius; and 2. A majority of the beneficiaries appointed under the terms or a charter or will are resident in Mauritius.

From the above, we understand that all the above conditions, as they apply to a trust or a foundation as the case may be, need to be satisfied to in order for a trust or foundation to be considered as resident in Mauritius. Hence, a Mauritian trust which has a majority of non-resident trustees or beneficiaries, or where the settlor is not a Mauritian resident when assets are settled into the trust, will be considered as non-resident. Similarly, for foundations, if the founder or a majority of the beneficiaries are not Mauritian resident, then the foundation will not be considered as resident in Mauritius.

Taxation of Trusts and Foundations post FA 2021

SP 24/21 further clarified that a non-resident trust or foundation will only be taxable on their Mauritian source income. The following diagram summarises the income tax implications of a trust or foundation in Mauritius:



- The 80% partial tax exemption which is provided to certain income streams is applicable to trusts and foundations provided they satisfy the required substance conditions in Mauritius.
- Trusts and Foundations are required to submit their respective annual tax return to the MRA within 6 months following the accounting period end. This is applicable to both resident and non-resident trusts and foundations.

Overall, SP 24/21 helps to provide clarity on the taxation of non-resident trusts and foundations in Mauritius. It is however unfortunate that SP 24/21 did not provide guidance on the definition of “specific assets or projects” which as per FA 2021, is left to be determined by the Director General.

It is strongly recommended that the impact, if any, of the changes brought by FA 2021 and SP 24/21 issued by the MRA are analysed carefully, for both existing as well as new trusts and foundations.

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- FATCA and CRS
- Accounting
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