

5 July 2020

Alert



THE FINANCE (MISCELLANEOUS PROVISIONS) BILL

This Alert provides our views on certain changes that will be made by the Finance (Miscellaneous Provisions) Bill (the “Bill”) to the Income Tax Act 1995 (“ITA 1995”) and the Value Added Tax Act 1998 (“VATA 1998”). The Bill will be the subject matter of the Parliamentary debates and may thus be amended. Furthermore, certain changes may be made by way of regulations: the Value Added Tax aspects of services provided by non-residents and the *contribution sociale généralisée* are areas that will be addressed by way of regulations.

Since the introduction of the solidarity levy by section 26 (d) of the Finance (Miscellaneous Provisions) Act 2017, we have expressed our strong disagreement on the inclusion of dividend income within the scope of the levy. We also expressed the inherent flaws of the extension of the levy to the share of dividend income a resident individual may have in a resident partnership and/or succession further to the change made by section 26 (c) of the Finance (Miscellaneous Provisions) Act 2019.

In its current form, the tax aspect of insurance companies carrying life business is an increased tax cost. We are hoping that this will be reviewed considering the manner the tax would be applied, the amount on which the tax would apply, and the impact of losses incurred by such companies.

We will be issuing another Alert once the Bill has been approved.

In the meantime, if you require any further information, please do not hesitate to contact us.

Yours faithfully

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A. PERSONAL TAX

1. Solidarity levy

Consistent with the Budget announcement, the rate of the solidarity levy (the "levy") is 25% (the "base rate") and the excluded portion of the leviable income for the purposes of the levy is reduced from Rs 3,5million to Rs 3million as from the year ending 30 June 2021. However, the levy is restricted to 10% (the "maximum rate") of the aggregate of the net income and the dividend income.

To compute the maximum amount of the levy, the maximum rate is applied on the aggregate of (a) net income; (b) dividends from Mauritian resident companies; and (c) share of dividends in a resident partnership or succession. Net income is the income before the Income Exemption Threshold ("IET") and other deductions. The levy continues to be applied to resident individuals only, irrespective of their citizenship.

- *The aggregate of the income tax and the levy as a percentage of the chargeable income will be less than 25%.*
- *The level of leviable income that will lead to an identical amount of levy using the base rate and the maximum rate is determined as follows:*

$$\frac{0.25 \text{ times } [\text{Sum of relevant IET and other deductions}] + \text{Rs } 750,000}{0.15}$$

For example, for an individual eligible for the Category D IET of Rs 600,000, the levy will be based on the maximum rate for an individual with a chargeable income and Mauritian sourced dividend income of more than Rs 6million.

- *Where the individual has Mauritian sourced dividend income only, the rate of the levy will be 10% if his yearly dividend income is Rs 5million or more. Though the rate of the levy will be 25% on a yearly dividend income of less than Rs 5million, the fact that the leviable income is reduced by Rs 3million implies that the effective rate of the levy would be less than 10% based on the total dividend income.*

2. Relief for bedridden next of kin dependent

A person will be considered as a bedridden next of kin dependent if the individual is the father, mother, grandfather, grandmother, brother or sister of the person or his spouse's. The bedridden individual should be eligible to the carer's allowance and under the care of the person.

- *This policy decision is welcomed by resident individuals in view of the inherent cost for the bedridden individuals.*
- *Complications may arise where the bedridden individual is taken care of by one or more siblings/relatives. Insofar as only one person considers the bedridden individual, we do not foresee that the IET would be denied on the basis that the individual is not under the exclusive care of one particular individual.*

3. Income Exemption Threshold

The basic IET for all Categories has been increased: the amount of IET depends on the number of dependents and is summarised below.

	Number of dependents	30 June	
		2019	2020
		Rs	
Category A	None	310,000	325,000
Category B	One	420,000	435,000
Category C	Two	500,000	515,000
Category D	Three	550,000	600,000
Category E	Four or more	600,000	680,000

This measure also impacts on the exemption portion of the retirement pension of citizens of Mauritius who are not tax resident in Mauritius.

B. BUSINESS TAX

1. Income from life insurance business

As announced in the Budget, the tax payable by a company on its income from its life insurance business will be the higher of its tax payable, pursuant to regulation 17 of the Income Tax Regulations ("ITR"), and 10% of the relevant profit (the "10% tax").

Relevant profit is defined as the profit attributable to shareholders in an income year and is adjusted by any capital gains/(losses) attributable to shareholders where such gains/(losses) have been reflected in the accounts of the company.

- *The Bill refers to the tax payable by a company that has income from the life insurance business so that the new tax will apply to the company.*
- *No reference is made to any accounting standard for the purposes of computing the relevant profit. Clarity is required so that there is parity in the determination of the relevant profit for the purposes of the 10% tax.*
- *Capital gains attributable to shareholders are not recognised in the accounts of the companies in which they own shares. This rests on the basic principle that shareholders are separate and distinct persons from the companies.*
- *The 10% tax appears to be applied independently from regulation 17 of the ITR.*
- *The fact that an insurance company may have unrelieved loss further to the 5 years restriction implies that the 10% tax is effectively an additional tax.*
- *The proposed section does not allow an insurance company to relieve any loss from any previous years so that a company may be liable to tax even though it has accumulated losses.*
- *The profit attributable to the shareholders may include unrealised profits.*

- *It does appear that Corporate Social Responsibility (“CSR”) will not apply where the 10% tax applies.*
- *The fact that the 10% appears to be independent may imply that foreign tax credit may not be available where the foreign income of the company has been subject to foreign tax.*

2. Expenditure on electronic, high precision or automated machinery or equipment

Expenditure on electronic, high precision or automated machinery or equipment incurred on or after 1 July 2020 will qualify for full deduction in the year the person incurs the relevant expense.

- *Where the deduction results in a tax loss, the loss should not be subject to the 5 years restriction to the extent that the deduction is effectively an accelerated annual allowance.*
- *The fact that this measure is effective as from the year of assessment 2021/2022 implies that not all capital expenditure incurred on or after 1 July 2020 will qualify for the deduction. Where the basis period terminates in the six months ending 31 December 2020, the 100% deduction will only be applicable for capital expenditure incurred as from 1 January 2021. Take the example of a company with the calendar year as its basis year. An expenditure incurred in July 2020 will be in connection with the year of assessment 2020/2021 on the basis that the year ending 31 December 2020 is deemed to terminate on 30 June 2020.*

3. Expenditure on medical research and development

Expenditure on medical research and development will qualify for an extra deduction in the year the person incurs the expenditure, provided the research and development is carried out in Mauritius.

- *Appropriate evidence should be kept to substantiate the nature of the expenditure and the fact that the research and development is performed in Mauritius.*
- *The expenses that qualify for the extra deduction are not subject to any conditions and may, for instance, include emoluments.*
- *Any loss that results from the extra deduction will be subject to the 5 years restriction.*
- *The measure is effective as from the year of assessment 2021/2022 so that for a company with a basis year that terminates between 1 January and 29 June it will apply for expenses incurred as from 1 July 2020.*
- *Where the basis period terminates in the six months ending 31 December 2020, the extra deduction will only be applicable for expenditure incurred as from 1 January 2021.*

4. Expenditure on patents and franchises

Expenditure by a company on (a) the acquisition of patents and franchises; and (b) the costs to comply with international quality and norms qualifies for a double deduction in the year the company incurs the relevant expense.

- *We do not foresee any practical challenge to substantiate the nature of the expenditure.*
- *Any loss that results from the extra deduction will be subject to the 5 years restriction. A company may thus prefer to treat the related expense as a capital nature, even though the deduction would be spread over a number of years.*
- *The measure is effective as from the year of assessment 2021/2022 so that for a company with a basis year that terminates between 1 January and 29 June, it will apply for expenses incurred as from 1 July 2020.*
- *Where the basis period terminates in the six months ending 31 December 2020, the extra deduction will only be applicable for expenditure incurred as from 1 January 2021.*

5. Tax credit on capital expenditure incurred by a manufacturing company

Capital expenditure by a manufacturing company on new plant and machinery during the period from 1 July 2020 to 30 June 2023 qualifies for a tax credit equivalent to 15% in the year of acquisition and the subsequent two income years. For this purpose, motor cars are not considered to be plant and machinery.

- *The fact that the credit is based on the date the capital expenditure is incurred ensures that the basis year is irrelevant.*
- *The credit does not apply to cases where the plant and machinery is not acquired. To that extent, it may be argued that the credit is not fair.*
- *Appropriate evidence should be available to demonstrate the fact that the plant and machinery is new.*
- *It must be remembered that the credit cannot be utilised against the CSR liability of the company.*

6. Investment allowance to companies affected by COVID-19

Capital expenditure by any company on new plant and machinery during the period from 1 March 2020 to 30 June 2020 qualifies for an investment allowance of 100% of the capital expenditure incurred. For this purpose, motor cars are not considered to be plant and machinery.

- *The Bill refers to "Additional investment allowance". We believe that it should refer to "Investment allowance".*

- *The investment allowance applies to any company, irrespective of the nature of its business activities.*
- *Clarity is required on any utilisation of any tax loss that results from the investment allowance. To the extent that it is not strictly an annual allowance, its utilisation will be restricted to the 5 succeeding years.*
- *Appropriate evidence should be available to demonstrate the fact that the plant and machinery is new.*

7. Income of a company in the manufacture of pharmaceutical products, medical devices and high-tech products

The year the exemption period starts is based on the date the company starts its operations and not the incorporation date. The exemption will thus apply insofar as the company has started its operations on or after 8 June 2017.

- *This amendment is welcomed as it ensures that a company that has been incorporated before 8 June 2017 is able to benefit from the exemption insofar as the company has started its operations on or after 8 June 2017.*

8. Income of a company from inland aquaculture

The income of a company from inland aquaculture in Mauritius is exempt from tax for a period of 8 successive years as from the year the company starts operations, provided that the company commenced its activities on or after 4 June 2020.

The Bill also provides exemption on VAT for a person engaged in inland aquaculture in Mauritius under the Inland Aquaculture Scheme and registered as such with the Economic Development Board ("EDB") on equipment (excluding office equipment, furniture and vehicles) for the exclusive use of, or in furtherance of, the inland aquaculture project, as the Ministry responsible for the subject of marine resources and fisheries may approve.

9. Income of a company engaged in tertiary education

The income of a company that is approved by the Higher Education Commission ("HEC") as being a branch campus of an institution which ranks among the first 500 tertiary education institutions worldwide at the time of registration is exempt from tax for a period of 8 successive years. The year the company starts operations is the first year the income is considered to be exempt and the company must commence its activities on or after 4 June 2020. The activities of the company should be carried out in Mauritius.

The Bill also provides exemption on VAT for a any person approved by the HEC established under the Higher Education Act 2017 on information technology system and information technology related materials and equipment, for the purpose of online education at the time of the setting up of the branch campus in Mauritius, as may be approved by the HEC.

10. Income from the manufacture of nutraceutical products

The income of a company from the manufacture of nutraceutical products is exempt from tax for a period of 8 successive years as from the year the company starts operations, provided that the company commenced its activities on or after 4 June 2020.

C. TAX ADMINISTRATION

1. Submission and payment of tax by individuals

Electronic tax return will be compulsory as from the year ending 30 June 2021. At the same time, the submission and payment date will be 15 October.

- *The fact that the tax payment has to be made electronically by all taxpayers poses a number of practical challenges. It cannot be assumed that individuals are able to settle their tax payments electronically.*
- *With the increased movement of people across jurisdictions, foreign nationals may work in Mauritius for short periods of time. The contractual arrangements vary so that in a number of instances, the tax payment is arranged by the employer so that it is the employer that pays the tax on behalf of the employee. We are hoping that the MRA is flexible in such cases, even though the tax may be paid before 15 October. We prefer that this option be dealt with in the law for the benefit of all the relevant stakeholders.*

2. Refund of excess income tax

As from 1 September 2020, the refund of any excess income tax should be made within 60 days of the due date for submission of the tax return or the date of receipt of the claim, whichever is later. The time limit runs from the date the MRA receives any documents or information requested, where such a request has been made to a person.

- *The fact that the refund mechanism is being streamlined is welcomed. The success of this measure will, to a large extent, depend on the practical implications of any information and documents requested by the MRA. The nature of the information and documents widely varies and may be of a substantive or legal nature.*

3. Registration of construction of housing estates

For the purposes of the exemption under section 27 and section 45A(9) of the Registration Duty Act and the Land (Duties and Taxes) Act respectively, the transfer to a company of a plot of land can be made by 31 December 2020: the same time frame applies to the registration of the company with the MRA. The transfer by the company of the land together with the housing unit should be made not later than 30 June 2022. The construction of the housing estates should be completed by 31 December 2021. Where the sales value does not exceed Rs 7million, the registration should be executed between 1 July 2020 and 31 December 2020.

D. VALUE ADDED TAX

1. International services

Section 14 of the VATA is being amended so that the reverse charge provision will apply to only VAT registered persons. The amendment made by section 58(a) of the Finance (Miscellaneous Provisions) Act 2016 on the application of the reverse charge provision by non-registered persons is thus no longer relevant.

A foreign supplier will be required to charge VAT on any digital or electronic services. For this purpose, a foreign supplier is defined as a person who has no permanent establishment in Mauritius and supplies, in the course of his business, digital or electronic services to a person in Mauritius. "digital or electronic service" is defined as services supplied either by a foreign supplier over the internet or an electronic network which is reliant on the internet or by a foreign supplier and is dependent on information technology for its supply.

- *The regulations will provide the manner in which the VAT will be charged by the foreign supplier.*
- *The regulations will also provide the services that will fall within the scope of this provision.*
- *The treatment for services rendered by a non-resident to a Mauritian person through traditional mediums should be clarified.*
- *We assume that exempt and zero-rated services will be treated in the same manner.*
- *It is uncertain if a foreign service provider will still be required to charge VAT on a transaction that has already been subject to VAT in its country of establishment.*

2. Taxable supplies made to exempt bodies or persons

Any person engaged in medical research and development and registered with the EDB is exempt on VAT relating to the construction of purpose-built buildings for medical research; and plant and equipment (excluding vehicles), as approved by the EDB.

Any holder of a Smart and Innovative Mauritius Development Certificate issued by the EDB under the Smart and Innovative Mauritius Development Scheme is exempt from VAT on (a) the construction of a purpose-built building and related infrastructure; and (b) plant, machinery, equipment and materials (excluding vehicles), in respect of the setting up of the smart and innovative-driven project as the EDB may approve.

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