

“ END OF THE GRANDFATHERING ERA – WHAT NEXT?”

Background

As one may recall, the global business sector was subject to major reforms in the year 2018, which in fact, ensued the OECD/G20 BEPS Project. This project initiative transcended jurisdictional borders and in effect, entailed a series of changes to the legal and fiscal regime of many countries, including Mauritius.

Prior to the change, a company proposing to carry its business outside of Mauritius could apply for a Category 1 Global Business Licence (GBC 1 licence) or a Category 2 Global Business Licence (GBC 2 licence), as the case applies. A company with GBC 1 licence, being resident in Mauritius, was taxed at the headline rate of 15% on its chargeable income and was entitled to a deemed foreign tax credit (DFTC) of 80%, which resulted into an effective maximum tax rate of 3%. On the other hand, a company with GBC 2 licence, though resident in Mauritius by virtue of its incorporation was exempt from corporate tax in Mauritius.

Further to the enactment of the Finance Act 2018, a new global business framework was introduced and the GBC 1 and GBC 2 licences were abolished. The new framework provided for a single licence which

was referred as Global Business Licence (GBL) and could be sought by a Global Business Corporation, and an authorization which could be sought by an Authorised Company. However, in order to ensure a smooth transition to the new regime, companies holding the GBC licences issued before 16 October 2017, were grandfathered till June 2021. It meant that no changes were required to such structures until the end of the grandfathering period. On the other hand, companies holding the GBC Licences issued after 16 October 2017, could operate with the same licence up to 31 December 2018. A GBC 1 licence which was valid on 31 December 2018 was deemed, after that date, to be a Global Business Licence. In contrast, the GBC 2 Licence was lapsed on 31 December 2018 and holders of such licence had to take the relevant action.

A company holding the GBC 1 licence which is grandfathered and is valid on 30 June 2021 shall, after that date, be deemed to be holding a Global Business Licence and shall be referred as a Global Business Corporation. On the contrary, a company holding the GBC 2 licence which is grandfathered and is valid on 30 June 2021 shall, after that date, lapse, but the holder shall continue to –

- (i) comply with such terms and conditions as the Financial Services Commission (FSC) may determine;
- (ii) remain subject to the obligations of a licensee; and
- (iii) comply with the directions of the FSC for the orderly dissolution of the business and the discharge of its liabilities.

The changes to the fiscal regime resulted in the elimination of the DFTC and the introduction of a new tax credit system known as the Partial

Exemption Regime (PER). It entitles a tax payer to benefit from an exemption of 80% on certain specified income, however, subject to compliance with substance requirements. The reform was blessed by the OECD which confirmed in its report on Peer Review Results regarding assessment on harmful tax practices of preferential regimes in various jurisdiction, including Mauritius, that the country met all the requirements of BEPS Action 5 and that it did not have any harmful tax practices in its regime.

01

Company with Category 1 Global Business Licence

As it has been noted above ‘a company holding the GBC 1 licence which is grandfathered and is valid on 30 June 2021 shall, after that date, **be deemed to be holding a Global Business Licence and shall be referred as a Global Business Corporation**. A holder of the GBL shall, at all times:

- (i) carry out its core income generating activities (CIGA) in, or from, Mauritius,
- (ii) be managed and controlled from Mauritius; and
- (iii) be administered by a management company.

In determining whether a holder of a GBL is managed and controlled from Mauritius, the FSC shall have regard, in particular, to whether the company:

- (i) has at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement;
- (ii) maintains, at all times, its principal bank account in Mauritius;
- (iii) keeps and maintains, at all times, its accounting records at its registered office in Mauritius;
- (iv) prepares its statutory financial statements and

causes such financial statements to be audited in Mauritius; and

- (v) provides for meetings of directors to include at least 2 directors from Mauritius.

“ THE GBC WILL CONTINUE TO BE SUBJECT TO THE HEADLINE TAX RATE OF 15% AND WILL BE ABLE TO EITHER CLAIM A TAX CREDIT ON ITS FOREIGN SOURCE INCOME WHICH HAS BEEN SUBJECT TO TAXES IN THE SOURCE COUNTRY OR SEEK THE 80% PER ON CERTAIN INCOME, SUBJECT TO IT NOT CLAIMING FOREIGN TAX CREDIT ON ITS FOREIGN SOURCE INCOME AND COMPLYING WITH THE SUBSTANCE REQUIREMENTS, WHICH IN EFFECT, WILL EXPOSE SUCH INCOME TO A MAXIMUM TAX RATE OF 3%.

The PER is available on the following income:

- Foreign dividend, on the basis that it has not been allowed as a deduction in the source country;
- Interest income;
- Profit attributable to a Permanent Establishment in a foreign country;
- Income derived by a Collective Investment Scheme (CIS), Closed End Fund, CIS Manager, CIS Administrator, Investment Adviser or Asset Manager licensed or approved by the FSC;
- Income derived by companies engaged in ship and aircraft leasing;
- Interest income derived from money lent through a peer-to-peer lending platform operated under a license issued by the FSC (after the five-year tax holiday);
- Income derived from the leasing and provision of international fibre capacity;
- Income derived from reinsurance and reinsurance brokering activities;
- Income derived from the sale, financing arrangement, and asset management of aircraft and its spare parts, including aviation advisory related services.

In relation to dividend income, the exemption shall be granted provided that the company:

- (i) complies with its filing obligations under the Companies Act or the Financial Services Act; and
- (ii) has adequate resources for holding and managing share participations.

With respect to (most) of the other income, the exemption shall be granted provided that the company:

- (i) carries out its core income generating activities in Mauritius;
- (ii) employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income generating activities; and
- (iii) incurs a minimum expenditure proportionate to its level of activities.

The definition of core income generating activity varies according to the different income streams and are set out below:

Income	Core Income Generating Activity
Interest Income	Agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements and managing any risks
Income derived by Collective Investment Scheme	Investment of funds in portfolios of securities, or other financial assets, real property or non-financial assets; diversification of risks; redemption on the request of the holder
Income derived by Closed End Fund	Investment of funds collected from sophisticated investors, in portfolios of securities, or in other financial or non-financial assets, or real property

Income	Core Income Generating Activity
Income derived by CIS Manager	Management of a Collective Investment Scheme; taking decisions on the holding and selling of investments; calculating risks and reserves; taking decisions on currency or interest fluctuations and hedging positions; and preparing relevant regulatory or other reports for Government authorities and investors
Income derived by CIS Administrator	Providing services with respect to the operations and administration affairs of a Collective Investment Scheme including accounting, valuation or reporting services
Income derived by Investment Adviser or Asset Manager	<ul style="list-style-type: none"> ➤ Advising, guiding or recommending other persons, or holding himself out to advise, guide or recommend other persons, whether personally or through printed materials or by other means, to enter into securities transactions; ➤ Managing or holding himself out to manage, under a mandate, whether discretionary or not, portfolios of securities; and ➤ Giving advice on corporate finance advisory matters concerning securities transactions
Income derived from Ship and Aircraft Leasing	Agreeing on funding terms, identifying and acquiring assets to be leased, setting out the terms and duration of any leasing, monitoring and revising any agreements, and managing any risks
Income derived from Reinsurance and Reinsurance Brokering activities	Predicting and calculating risk, reinsuring against risks, administering clients' cell, providing related services, preparing regulatory reports, and providing clients technical advice in respect of reinsurance and liabilities
Income derived from leasing and provision of international fibre capacity	Agreeing funding terms, identifying and acquiring capacity to be leased or otherwise provided, setting out the terms and duration of any leasing or right of use contracts, monitoring and revising any agreements, and managing any risks
Income derived from sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services	Negotiating the terms of purchase and sale of aircraft and its spare parts, arranging for sale and leasing of aircraft, agreeing funding terms and providing advisory services in aviation related services

02

Company with Category 2 Global Business Licence

In the case of a company having the GBC 2 licence and which has been grandfathered till June 2021, it **will have to take an action before that date** by either converting to a GBC or to an Authorised Company or migrate to another jurisdiction or as a last resort, close down.

1 > Change to an Authorised Company (AC)

An AC has most of the attributes of that a holder of the GBC 2 licence had. It is incorporated in Mauritius and has to be managed and controlled outside of Mauritius and as such, it is not taxed in Mauritius on its foreign source income and therefore, does not benefit from any double taxation avoidance agreement. It may engage in any legitimate non-financial business and which has to be conducted principally outside of Mauritius.

2 > Convert to a GBC

The conversion to a GBC implies that the company will have to comply with the requirements enumerated above for such company.

3 > Migrate to another jurisdiction

It may, alternatively, be contemplated to migrate the company to another jurisdiction. Some interesting International Financial Centres which may be explored are the Seychelles, British Virgin Islands, Cayman Islands, etc. where the entity can be migrated as an International Business Company (IBC). The IBC is intended for business use outside of that country and will be regarded as a non-resident company for tax purposes. It is advised to seek proper guidance on the relevant jurisdiction while AXIS remains available to recommend and facilitate liaison with a registered agent in those countries to ensure a seamless continuity.

4 > Closure

Holder of such licence may, as a last recourse, chose to close down the company before 30 June 2021 to avoid any ambiguity. If no action is taken before the relevant date, the licence will lapse and the company will not be able to continue business. As mentioned above, the company will be subject to the directives of the FSC.

Conclusion

The grandfathering period will soon draw to its end! Licensees are advised to review their exposure, if any, to the new regime and to take the necessary action which commensurate to their business needs.



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