ykj LEGAL

NEWSLETTER

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- Immigration Law
- Investment Funds
- Regulatory
- Private Client and Fiduciaries
- Insurance and Captive Insurance
- General Corporate & Commercial
- Banking & Finance

EDITORIAL: Mauritius - Quo Vadis?

Dear Reader

We are pleased to circulate our first newsletter for this first quarter of 2017.

2017 is a year viewed by most as a year with both challenges and opportunities especially on the economic front. The global economy in this time is no doubt clouded with a lot of uncertainties and more precisely with political uncertainties. The outcome of the elections results in many leading countries is surprisingly becoming hard to predict. In this context, the outcome of the elections remains to be seen, for example, in France and Germany in the next presidential elections. The reality of the situation is that the political situation and policies of newly elected governments do have an impact on the economy generally.

No doubt, the major events of 2016 will inevitably impact this year's activities. Mauritius being an open economy is inevitably bound to be affected by external factors. Brexit, the election of Donald Trump as President of the USA, the Eurozone debt crisis, the slowdown of the economy in China and its indebtedness, the renegotiation of the India/Mauritius treaty, the coming into operation of Common Reporting Standards (CRS) will no doubt require us to take innovative measures to become an efficient and effective financial services centre.

The Mauritius Government has indeed promptly taken proactive measures in the recent Finance Act 2016 to attract more FDI, stimulate service providers to carry out financial activities of substance, attract talented professionals and businesses by providing tax holidays for a period of 5 to 8 years. The renegotiated India/Mauritius DTAA gives Mauritius an edge over other competing jurisdictions as the clause relating to interest rate is definitely more advantageous than other competing jurisdictions such as Cyprus, Singapore and the Netherlands.

The emphasis of our jurisdiction is on quality service, proactiveness to work out solutions for global clients, to be a hub for investment to the African continent and Asian countries and enable investors to achieve cost efficiency. The regulators of Mauritius have been taking and are still taking the requisite measures to ensure that the jurisdiction is clean, transparent and well regulated.

Interestingly, since the beginning of this year, we have witnessed several international players and service providers which have started their financial services activities in Mauritius. This is clearly a positive sign and we can but hope that others will follow.

Mauritius has a very well diversified economy and ranks first as a country for ease of doing business in Africa and even ahead of several European countries. It is well regulated and subscribes to all the measures taken by the International Organisations such as OECD in implementing measures to curb tax evasion. Mauritius is bound to innovate itself and to evolve as a financial services centre in the region with financial activities of greater substance.

Yuvraj Juwaheer
Managing Partner

Financial Services Commission of Mauritius publishes substance requirements to be satisfied by licensees for availing tax holidays in Mauritius.

With a view to giving a new impetus to the financial services industry and in a bid to attracting more players in this industry, the Finance Minister had in the 2016/17 budget announced a tax holiday of 5 to 8 years to certain Global Business Companies. The Mauritius Government considered coming up with incentive measures to enhance the spectrum of services being provided currently.

An 8-year tax holiday will be available to company issued with a Global Headquarters Administration Licence by the Financial Services Commission (the "Commission"). The other licensees in the list hereunder will be exempt from tax for a period of 5 income years.

(a) Global Treasury Activities;
(b) Overseas Family Office (Single);
(c) Overseas Family Office (Multiple);
(d) Investment Banking; and
(e) Global Legal Advisory Services

The Commission has now issued, under Section 7(1)(a) of the Financial Services Act 2007, employment and substance requirements to be satisfied by the licensees to be eligible for availing tax holidays. The licensee shall have physical office, minimum number of employees resident in Mauritius and minimum annual operating expenditure in Mauritius/ assets under management, as specified below:

(a) Global Headquarters Administration – employ 10 professionals with at least two at managerial positions and incur annual expenditure of MUR 5 million;

(b) Global Treasury Activities – employ four professionals with at least one managerial position and incur annual expenditure of MUR 2 million;

(c) Overseas Family Office (Single) – employ at least one professional and have assets under management of more than USD 5 million;

(d) Overseas Family Office (Multiple) – employ at least three professionals and have assets under management of more than USD 5 million for each family;

(e) Investment Banking – employ at least five professionals and incur annual expenditure of MUR 5 million; and

(f) Global Legal Advisory Services – employ at least five lawyers.

Limited Liability Partnerships Act 2016

The Limited Liability Partnerships Act 2016 (the "Act") came into operation on 3 January 2017 and provides for the registration and administration of limited liability partnerships in Mauritius.

The Act allows professionals or consultants and holders of a Global Legal Advisory Services Licence (entitled to provide legal services pertaining to global business, international arbitration, corporate law, taxation law and foreign and international law) to operate under this structure whereby partners have limited liability.

Key Features

— Benefit from involvement and participation in the management and profits of the business whilst being only liable up to any amount contributed (other than liability arising out of own wrongful act or omission).

— The LLP has a legal personality separate from that of its partners.

— The LLP shall have at least 2 partners (any individual, body corporate or unincorporated body formed or registered with or without liability in Mauritius or elsewhere) and a Manager who shall be a natural person resident in Mauritius. However, the Manager of an LLP holding a Category 1 Global Business Licence shall be a Management Company licenced by the Financial Services Commission of Mauritius.

— The Manager shall be responsible for guiding the partners on their duties and obligations under the Act, ensuring that minutes of meetings of partners are taken, ensuring compliance with filing requirements and ensuring that the financial summary of the LLP is prepared on time.

— Every LLP shall have a partnership agreement setting out the mutual rights and duties of the LLP and its partners and regulates the affairs of the LLP.

— A foreign limited liability partnership is allowed to be registered or continued as a foreign limited liability partnership in Mauritius.

— On the basis that the LLP is resident in Mauritius, it shall not be liable to income tax but each partner shall be liable to tax on his share of income at the rate of 15%.

Mauritius Supreme Court rules on apportionment of expenses attributable to capital gains in JP Morgan Sicav Investment Company (Mauritius) Limited v/s The Assessment Review Committee and the Director General, Mauritius Revenue Authority, 2017 SCJ23.

Background

The Appellant in the present case is an investment company holding a Category 1 Global Business Licence issued by the Financial Services Commission of Mauritius. It derived income from dividends paid by Investee companies and interest from Bank. It also realised gains or losses on disposal of its investment.

The Appellant had claimed deduction from the gross income, its total expenditure on sundry expenses and custodian and sub custodian fees. The MRA disallowed the claim made pursuant to the formula set out under sections 18 and 26 of the Income Tax Act, 1995 set out as follows:

$$\frac{\textbf{Capital gains}}{\textbf{Income + Capital gains}} \quad \textbf{X} \quad \textbf{Allowable Expenses}$$

Grounds of appeal

The Appellant then before the Appeal Review Committee objected to the assessments on the following grounds:

(i) The Income Tax Act (the ''Act'') does not have any provision as regards apportionment of common expenses to capital gains.

(ii) Under section 18 of the Act, expenses are allowed as deductions to the extent they are incurred exclusively in the production of gross income.

(iii) Section 26 of the Act was not applicable to determine the assessment.

Essential points of the Supreme Court Judgment

The Supreme Court held that sections 18 and 26 of the Act are not mutually exclusive and that these two sections must be read together.

Also, the Supreme Court accepted the submission of the MRA that the apportionment formula was made in the best judgment of the Director General pursuant to section 129 (1) of the Act and not section 26.

The Supreme Court also endorsed the Tax Ruling made by the MRA in May 2006 ("TR 50") to the effect that only expenses directly attributable to the sale of shares such as commission payable to brokers are not allowable.

It also held that capital gain and exempt income share the same characteristic of being unallowable. It was held that TR 50 was given on expenditure incurred in the production of dividend income or gains on disposal of securities and not on expenses in the production of both dividend income and capital gain.

Finally, the Supreme Court held that a company cannot have the double benefit of non-taxable capital gain and at the same time benefit from deductions of expenses which have produced such capital gains.

YKJ Legal a member of ALFA International

We are delighted to announce that effective as from 1 February 2017, YKJ Legal has been admitted exclusive member of ALFA International for the territory of Mauritius.

ALFA International is the premier network of independent law firms. Founded in 1980, ALFA International was the first and continues to be one of the largest and strongest legal networks. It has 150 members firms throughout the world. 80 U.S. firms maintain offices in 95 of the 100 largest metropolitan areas. Furthermore, 70 international firms are located throughout Europe, Asia, Australia/New Zealand, Africa, Canada, Mexico and South America.

We are confident that our membership will enhance our ability to serve our clients and contribute to their success especially our clients with global operations

The experienced Mauritian Corporate and Commercial law firm focussing on Asia and Africa

*To passionately serve our clients with skilled legal advice in a **timely and efficient manner***

*To be **accessible** to our clients*

*To meet our clients **expectations***

*To deal clients' matters with utmost **confidentiality***

CONTACT US

YKJ LEGAL
Unit3, Level 12, Standard Chartered Tower
19 Bank Street, Cybercity, Ebene,
Republic of Mauritius

Tel: (230) 465 1810
Web: www.ykjlegal.com

Member ALFA International
The Global Legal Network
Local Relationships Worldwide

Team

Yuvraj Juwaheer
Managing Partner
Email: yuvraj@ykjlegal.com

Varsha Boodhoo
Partner
Email: varsha@ykjlegal.com

Vikram Seesunkur
Partner
Email: vikram@ykjlegal.com