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A: Finding the meaning of nexus for taxes – past, present and future

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Mauritius

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Summary and conclusions

Nexus represents the concept of establishing a sufficient connection between an entity and a jurisdiction for taxation purposes and occupies a central and often contentious space in Mauritius' tax landscape. The taxation of income of both companies and individuals in Mauritius is governed by the main tax legislation, the Income Tax Act 1995 ("ITA"), and by the Income Tax Regulations 1996 ("ITR"). Amendments to tax law are usually made annually following the enactment of the Finance Act after the Minister of Finance Budget Speech.

There are two bases of taxation in Mauritius, namely the residence and the source base. Under the residence rule, a resident of Mauritius is taxable in respect of his worldwide income, while under the source rule the income earner is taxable only in respect of income that is derived from Mauritius regardless of where the income earner is resident. Income Tax is charged on most classes of income when it is accrued, derived from, or received in Mauritius.

A resident is defined in the Income Tax Act as an individual who is normally domiciled in Mauritius unless the permanent domicile is outside Mauritius or has lived in Mauritius for a period of 183 days or more in an income year or has lived in Mauritius for an aggregate period of 270 days in an income year and the 2 preceding income years. A company is resident in Mauritius if it is incorporated in Mauritius or has its central management and control in Mauritius.

Traditionally, the cornerstone of Mauritius' tax regime has been the Double Taxation Avoidance Agreements (DTAs) it holds with over 50 countries. These agreements typically define nexus through "permanent establishment" principles, where a foreign company is only taxed in Mauritius if it has a physical presence or conducts ongoing business activities within the country.

Mauritius offers a relatively low tax jurisdiction with an investor-friendly environment to encourage both local and foreign companies to set up a business in Mauritius. Certain categories of income, foreign dividends, and interests may be taxed at an effective rate of 3% under the partial exemption regime provided they satisfy the conditions set out under section 23D of the Income Tax Regulations 1996. Furthermore, where a taxpayer derives income which is subject to foreign tax, the amount of foreign tax so paid shall be allowed as a credit against income tax payable in Mauritius in respect of that income.

Companies incorporated in Mauritius deriving dividend income from foreign sources

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are subject to tax at the rate of 15%. The Income Tax (Foreign Tax Credit) Regulations 1996 provides underlying tax credits where a dividend is paid by a company which is not resident in Mauritius to a person who is resident in Mauritius.

Resident companies are taxed on interest income derived worldwide at the rate of 15%. Interest income shall be exempt where it is paid to a non-resident by a company holding a Global Business License.

Royalty income received locally is subject to tax at the rate of 15%. Foreign-sourced royalty income is also subject to tax at the rate of 15%. Royalty payable to a non-resident by a company out of its foreign source income is exempt from tax in accordance with section 7 of the Income Tax Act 1995.

Furthermore, Tax Deducted at Source is also imposed under section 111C of the Income Tax Act 1995, on every payer at the time any amount or sum referred to in section 111B is made available to the payee, deduct income tax from the amount or sum so made available at the appropriate rate specified in the Sixth Schedule of the Income Tax Act 1995.

Retirement pension of any kind not exceeding the reliefs, deductions, and allowances payable to a resident of Mauritius is not subject to tax. The retirement pension in excess of the reliefs, deduction and allowance is liable to tax at the prescribed rate.

Nexus is also established through the employment relationship of individuals working in Mauritius and deriving employment income. Directors who derive director's fees are taxable in Mauritius under the source rule concept whereby directors' fees and any other similar payments derived by any person in his capacity as a member of the board of directors of a company which is resident in Mauritius, whether the services are performed in, or from outside, Mauritius is subject to tax in Mauritius. The taxation of foreign source income under the remittance basis applies only to individuals, resident in Mauritius.

Value Added Tax shall be charged on any supply of goods or services made in Mauritius, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him. Therefore, provided that the services performed or utilized in Mauritius would be sufficient to create nexus from a VAT perspective.

Stamp duty is payable at the time of registration, transcription, inscription, or erasure of inscription as the case may be. All duty, excise duty and taxes shall be paid at the rate specified upon all goods entered unless such goods are entered to be warehoused in a bonded warehouse or are free of duty, excise duty and taxes.

There are no capital gains tax, financial transfer taxes, inheritance or wealth taxes, shipping or tonnage tax, natural resources and energy taxation and federal/regional tax systems. There are no real estate taxes in Mauritius, however, in the case of immoveable property, the acquiror is subject to registration duty whereas the seller is subject to land transfer tax.

The basis of taxation in Mauritius is namely the residence and the source base. Non-residents conducting business are taxable in Mauritius if they create a PE. In the absence of PE, no tax will arise in Mauritius except in certain situations where there are no treaties and income is source in Mauritius such as interest and royalty income. The Mauritius Revenue Authority's ("MRA's") ongoing interpretation of the Mauritius Income Tax Act 1995 ("ITA") and application of revised DTAs will be crucial in shaping how nexus translates into practice.

1. Introduction

Taxes in Mauritius are administered by the Mauritius Revenue Authority ("MRA") and are all on a self-assessment system. Under that system, persons liable to pay the relevant tax or duty must submit declarations at the end of specified periods and pay the tax arising thereon, if any in accordance with the declarations. The taxation of income of both companies and individuals is governed by the main tax legislation, the Income Tax Act 1995 ("ITA"), and by the Income Tax Regulations 1996 ("ITR"). Amendments to tax law are usually made annually following the enactment of the Finance Act after the Minister of Finance Budget Speech. In Mauritius, after the budget speech, the Finance and Miscellaneous Bill ("Bill") is issued and made available to the public for their comments. After receiving comments from the public and professionals in the respective industry the Bill is debated in Parliament and thereafter approved.

In recent years, this concept has undergone significant transformations, reflecting both the global evolution of tax principles and Mauritius' own strategic manoeuvres to maintain its position as a premier international financial centre. Understanding the presence of nexus in Mauritius demands navigating a labyrinth of legal intricacies, policy shifts, and ongoing international scrutiny.

2. Income Tax

2.1. General characteristics

Mauritius offers a relatively low tax jurisdiction with an investor-friendly environment to encourage both local and foreign companies to set up a business in Mauritius. Local and global business sector companies in Mauritius are liable to a headline corporate tax rate of 15%, other than exempt income. There is no capital gains tax in Mauritius. However, certain transactions are taxed as ordinary business profit instead of capital gains. Where a transaction is in the nature of trade, the MRA may take the view that it is revenue in nature and assess the gains derived as income. Gains realized from the sale of any property or interest in property acquired in the course of a business, as part of a profit-making undertaking or scheme, are taxable as ordinary income.

Under the Mauritius Income Tax Act 1995 ("ITA"), there are various yardsticks or parameters for measuring or demonstrating nexus in Mauritius. Despite the fact that the business model has evolved over time whereby more businesses are being carried out via e-commerce, the definition of nexus has remained the same over the years.

In fact, there are two bases of taxation in Mauritius, namely the residence and the source base. Under the residence rule, a resident of Mauritius is taxable in respect of his worldwide income, while under the source rule the income earner is taxable only in respect of income that is derived from Mauritius regardless of where the income earner is resident.

Mauritius taxes income under the "residence rule". If income is derived from Mauritius, it is taxable in Mauritius as stipulated under section 5(1) (a) of the ITA. Thus, if a person is not resident in Mauritius but derives for example commission arising from referring a client to an agency for the purchase of a property in Mauritius, the commission is taxable in Mauritius. However, if the person is resident in Mauritius, he is taxable in respect of all his income derived from both Mauritius and from outside Mauritius.

Gross Income is defined under section 10 of the ITA which includes any income derived from any business activity carried out.

2.2. Main jurisdictional bases

2.2.1. Personality basis

Income tax is charged on most classes of income when it is accrued, derived from, or received in Mauritius. The year of assessment runs from 1 July of any year to 30 June of the next year. Residents of Mauritius are taxed on worldwide income. A resident company is charged tax in respect of its worldwide income, regardless of whether the foreign source income is remitted or not in Mauritius. A non-resident is taxed on their Mauritius-source income.

A resident is defined in the Income Tax Act as an individual who is normally domiciled in Mauritius unless the permanent domicile is outside Mauritius or has lived in Mauritius for a period of 183 days or more in an income year or has lived in Mauritius for an aggregate period of 270 days in an income year and the 2 preceding income years. A company is resident in Mauritius if it is incorporated in Mauritius or has its central management and control in Mauritius.

Traditionally, the cornerstone of Mauritius' tax regime has been the Double Taxation Avoidance Agreements (DTAs) it holds with over 50 countries. These agreements typically define nexus through "permanent establishment" principles, where a foreign company is only taxed in Mauritius if it has a physical presence or conducts ongoing business activities within the country. This framework proved highly attractive to foreign investors, enabling them to leverage Mauritius' low tax rates and efficient infrastructure for optimized tax structuring.

However, the global landscape around tax avoidance measures has evolved rapidly. Concepts like Base Erosion and Profit Shifting ("BEPS") and the rise of anti-abuse clauses in double tax agreements ("DTAs") have shone a spotlight on Mauritius' traditional "nexus" requirements. Concerns emerged that certain entities, particularly multinational corporations, were exploiting Mauritius' framework to artificially divert profits and minimize their overall tax burden.

To rebut this criticism, Mauritius has embarked on a conscious recalibration of its nexus approach. The island nation has implemented several key measures to counter those that circumvent tax obligations. The revision of DTAs have also been renegotiated to tighten nexus provisions, often adopting broader "significant presence" tests that consider factors like employee presence, sales activity, and risk management functions to ensure companies operating in Mauritius have genuine economic substance, with a minimum physical presence and qualified personnel requirements.

The Mauritius Revenue Authority's ("MRA's") ongoing interpretation of the Mauritius Income Tax Act 1995 ("ITA") and application of revised DTAs will be crucial in shaping how nexus translates into practice. Additionally, international developments, such as the OECD's Inclusive Framework on BEPS, could further influence the evolution of nexus in Mauritius.

Beyond the immediate policy framework, a deeper understanding of the underlying concerns is crucial. The tension between attracting foreign investment and upholding fair tax principles lies at the heart of the nexus debate. Mauritius must navigate this delicate balance, ensuring its tax regime remains competitive while demonstrating its commitment to global norms.

One potential avenue for navigating this challenge lies in fostering genuine economic linkages between foreign companies and Mauritius. Encouraging research and development activities, skilled job creation and knowledge transfer could establish a more robust nexus and demonstrate the island nation's contribution to the global economy beyond mere tax optimization.

Ultimately, the presence of nexus in Mauritius presents both challenges and opportunities. By embracing transparency, fostering genuine economic activity, and remaining responsive to international developments, Mauritius can ensure its tax framework remains relevant and robust in the ever-evolving landscape of global taxation. The path forward will require careful navigation, but navigating the labyrinth of nexus could pave the way for a future where Mauritius thrives not just as a tax haven, but as a genuine contributor to the international economic ecosystem.

Nexus, in the context of taxation, refers to the connection or relationship between a taxpayer and a taxing jurisdiction that allows the jurisdiction to impose taxes on the taxpayer's income, profits, or activities. In the Mauritian tax universe, the concept of nexus has undergone significant developments in recent years, impacting both domestic and international taxation. The application of nexus for Mauritius tax purposes is as follows: -

2.2.2. *Other jurisdictional bases*

Personal taxation

Individuals deriving foreign source income which are remitted in Mauritius are liable to tax in Mauritius. Section 5(3) of the ITA provides important rules for the taxation of income derived from outside Mauritius by an individual resident in Mauritius. The income is taxable in Mauritius if 'it is received in Mauritius by him or on his behalf or it is dealt with in Mauritius in his interest or on his behalf.

Corporate taxation

Companies deriving foreign source income are taxable in Mauritius whether remitted are not. The foreign income accruing in the books of the company which fall under the definition of gross income under section 10 of the ITA are subject to tax in Mauritius. However, certain types of foreign income such as interest and dividends benefit from an 80% exemption provided that they satisfy the predetermined conditions set out under section 23D of the Income Tax Regulations 1996.

Moreover, Mauritius has an extensive network of DTAs with other countries. These treaties aim to prevent double taxation by allocating taxing rights between the contracting jurisdictions. DTAs typically define the circumstances under which a PE is established and provide rules for determining the source of income.

1. *Permanent Establishment ("PE")*

PE is not defined in the ITA but Mauritius' follows the OECD definition as it is a part of the Commonwealth. Under the OECD Model, the existence of a PE is the least correlation required for the source-based taxation of active business profits. Article 5 of the OECD

Model[3] defines "PE" as a "fixed place of business through which the business of the enterprise is wholly or partly carried on". Under this definition, it is not enough for business to be purely "carried on" abroad.[4] It follows that there should be an establishment of a specific connection to the other country, that is, a home "abroad", as this provides evidence of the economic bonds[5] (i.e., economic allegiance) between the enterprise and the other country. If it is established that the enterprise is connected with the other country, the latter can tax the profits that are attributable to the PE as long as business is carried out through the PE.

In traditional businesses, the dependence on physical presence is crucial, and the PE threshold can therefore be applied with comparative consistency and certainty so that business profits are attributed only to the more substantial and permanent presence which is the nexus for taxing the business profits.

2. *Business profits*

Businesses operating in Mauritius are subject to corporate income tax on their profits derived from Mauritian sources. This includes profits from the sale of goods or services, interest, dividends, and royalties.

There is no capital gains tax in Mauritius, however, certain transactions are taxed as ordinary business profit instead of capital gains. Where a transaction is in the nature of trade, the MRA may take the view that it is revenue in nature and assess the gains derived as income. Gains realized from the sale of any property or interest in property acquired in the course of a business, as part of a profit-making undertaking or scheme, are taxable as ordinary income.

Moreover, the foreign entities' profits arising from business profits are taxable by the countries where the activities are performed only if the business has a Permanent Establishment ("PE") there. Hence, the nexus is important so that the Mauritius Revenue Authority can apply the source taxation of income from its jurisdiction which falls under section 5 of the ITA.

Economic substance requirements

In line with international standards, Mauritius introduced economic substance rules in 2019. These rules aim to ensure that companies with a presence in Mauritius have a genuine economic presence and substance in the country. Companies must demonstrate that they have adequate staff, premises, and activities in Mauritius to support their business operations. Failure to meet these requirements may result in the denial of tax benefits and potential penalties. Currently, only companies meeting the economic substance requirements are able to claim an 80% exemption on the foreign dividend income. In the eventuality that companies do not satisfy the economic substance requirements they are denied treaty benefits and the MRA does not issue tax residency certificates to these entities.

[3] Art. 5 of the OECD Model.

[4] OECD Taxation Framework Conditions, supra note 35, Annex I, at 228.

[5] Skaar, Arvid A., "Erosion of the concept of Permanent Establishment: Electronic Commerce".

2.3. Dividends

Dividend is defined under section 2 of the Income Tax Act 1995 as a distribution authorised by the Board of Directors of a company and made out of the retained earnings of the company, after having made good any accumulated losses at the beginning of its accounting period, either in cash or in shares to its shareholders. Dividend paid to a company whether resident or not, out of the profits of a company resident in Mauritius is fully exempted from tax as stipulated under part II of the Second Schedule of the Income Tax Act 1995. Dividend income derived by a company resident in Mauritius from foreign sources is subject to tax at the rate of 15%. However, foreign-sourced dividend can benefit from an 80% exemption from tax provided that it satisfies the predetermined conditions set out under section 23D of the Income Tax Regulations 1996.

Dividend income derived by a company incorporated in Mauritius from foreign sources is subject to tax at the rate of 15%. However, foreign-sourced dividend can benefit from an 80% exemption from tax in accordance with item 6 of Sub-Part B of Part II of the Second Schedule of the Income Tax Act 1995. The exemption shall be granted provided the dividend has not been allowed as a deduction in the country of source and that it satisfies the predetermined conditions set out under section 23D of the Income Tax Regulations 1996. The two conditions under section 23D of the Income Tax Regulations 1996 state that the company benefitting from the foreign dividend must comply with its filing obligations under the Companies Act or the Financial Services Act and have adequate resources for holding and managing share participations. In addition to the law, the MRA also issues statements of practice under section 159A of the Income Tax Act 1995 which is binding to the taxpayer who has requested the ruling. The Statement of practice issued by the MRA further clarifies that for pure equity holding companies which only hold equity participations and earn only dividends and capital gains, they must respect all applicable corporate law filing requirements in order to meet the substance activities requirement, and they should be able to show that they have adequate resources for holding and managing share participations.

The Income Tax (Foreign Tax Credit) Regulations 1996 also provide underlying tax credits where a dividend is paid by a company which is not resident in Mauritius to a person who is resident in Mauritius and who owns directly or indirectly not less than 5% of the share capital of the company paying the dividend. On the other hand, every company which pays a dividend exceeding 100,000 rupees to an individual, société or succession in a year shall submit a return of dividend to the MRA in accordance with section 116D of the Income Tax Act 1995 giving information about the name and surname of every shareholder, the NIC number of every shareholder or, in the case of a non-citizen, the identification number issued to him by the immigration officer and the amount of dividend being paid.

In addition, resident companies deriving foreign-sourced dividend income may also benefit from Double Taxation Avoidance Agreements ("DTAA") in place between Mauritius and the foreign contracting state if any. Article 10 of the DTAA provides that dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State where the tax so charged to the beneficial owner shall not exceed 5% of the gross amount of the dividends if the beneficial owner is a company which holds at least 10% of the capital of the company paying the dividends or 10% of the gross amount of the dividends in all other cases.

2.4. Interest

Resident companies are taxed on interest income derived worldwide at the rate of 15%. Subject to section 77 of the Income Tax Act 1995, where a taxpayer derives income which is subject to foreign tax, the amount of foreign tax so paid shall be allowed as a credit against income tax payable in Mauritius in respect of that income. Section 3 of the Income Tax (Foreign Tax Credit) Regulations 1996 states that the credit shall be allowed for foreign tax on the foreign. source interest income of a resident company against the Mauritius tax computed by reference to the same income. Where credit is allowed against Mauritius tax in respect of the interest income, the amount of Mauritius tax so chargeable shall be reduced by the amount of the credit.

Furthermore, resident companies may also benefit from preferential tax rates on the foreign-sourced interest income under the Double Taxation Avoidance Agreements ("DTAA") Mauritius has agreed with specific foreign countries. So far Mauritius has concluded 46 tax treaties with different countries. Where it has been determined that interest has arisen in a Contracting State and paid to a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the interest in accordance with the conditions set out under article 11 of the DTAA.

Non-resident companies will be taxed at the rate of 15% also on interest income derived from Mauritius or on a remittance basis if the interest income is not sourced in Mauritius. However, in accordance with section 7 of the Income Tax Act 1995, interest income shall be exempt where it is paid to a non-resident by a company holding a Global Business License under the Financial Services Act out of its foreign source income in accordance with Sub-Part B of Part II of the Second Schedule of the Income Tax Act 1995. Item 7 of the same section provides that 80% of interest derived by a company, other than banks, non-bank deposit-taking institutions, a money changer, a foreign exchange dealer, an insurance company, a leasing company and a company providing factoring, hire purchase facilities, or credit sales facilities shall be exempted from tax provided that it satisfies the conditions set out under section 23D of the Income Tax Regulation 1996. Section 23D provides that the exemption shall be granted provided the company carries out its core income-generating activities ("CIGA") in Mauritius, employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income-generating activities and incurs a minimum expenditure proportionate to its level of activities. For the purposes of interest income, the CIGA includes agreeing on funding terms, setting the terms and duration of any financing, monitoring, and revising any agreements, and managing any risks. Furthermore, tax at the rate of 15% shall be levied on interest payable by any person, other than by a bank or non-bank deposit-taking institution, under the Banking Act, to any person, other than a company resident in Mauritius in accordance with section 111B and 111C of the Income Tax Act 1995.

2.5. Royalties

Royalty is defined under the Income Tax Act 1995 under section 2 as payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. Royalty income received locally is subject to tax at the rate of 15%. In accordance with section 111B and 111C of the Income Tax Act 1995, royalties payable to

any person, other than a citizen in respect of royalties for artistic or literary work, by any person, other than an individual or a company holding a Global Business License under the Financial Services Act 2007, shall retain Tax Deducted at Source at the rate of 10% for royalties payable to residents and 15% for royalties payable to non-residents. Furthermore, foreign-sourced royalty income is subject to tax at the rate of 15%. However, foreign tax credit shall be allowed up to the amount of Mauritian tax applicable for any foreign tax suffered from abroad. Royalty payable to a non-resident by a company out of its foreign source income is exempt from tax in accordance with section 7 of the Income Tax Act 1995.

Foreign-sourced royalty income is subject to tax at the rate of 15%. However, foreign tax credit shall be allowed up to the amount of Mauritian tax applicable for any foreign tax suffered from abroad in accordance with section 3 of the Income Tax (Foreign Tax Credit) Regulations 1996. The amount of Mauritius tax shall be reduced by the amount of the credit allowed against Mauritius tax chargeable in respect of the royalty income.

Furthermore, where a resident company has derived foreign-sourced royalty income with a country with which Mauritius has a DTAA in place, the tax so charged on the royalty income may not exceed 5% of the gross amount of the royalties as established under article 12 of the DTAA. On another note, royalty payable to a non-resident by a company out of its foreign source income is exempt from tax in accordance with section 7 of the Income Tax Act 1995.

2.6. Income from the sale of goods

In Mauritius, the nexus for taxation on income derived from the sale of goods is established under sections 4 and 5 of the Income Tax Act 1995. Section 4 of the Income Tax Act 1995 imposes tax on all income, other than exempt income, derived by a person during the preceding year. Exempt income is classified under the Second Schedule of the Income Tax Act 1995. Section 5 of the Income Tax Act 1995 further elaborates that income is deemed to be derived by a person where the income was derived from Mauritius, whether the person was resident in Mauritius or elsewhere, the source rule, or the income was derived at a time when the person was resident in Mauritius, whether the income was derived from Mauritius or elsewhere. Resident is defined under section 73 of the Income Tax Act 1995. Section 73 defines a resident individual as a person who has his domicile in Mauritius unless his permanent place of abode is outside Mauritius, has been present in Mauritius in that income year, for a period of, or an aggregate period of, 183 days or more or has been present in Mauritius in that income year and the 2 preceding income years, for an aggregate period of 270 days or more. In the case of the company, the latter is considered resident if it is incorporated in Mauritius or has its central management and control in Mauritius.

Furthermore, income shall be deemed to be derived by a person when it has been earned or has accrued or it has been dealt with in his interest or on his behalf, whether or not it has become due or receivable. Income derived by an individual from outside Mauritius shall be deemed to be derived by the individual on a remittance basis, that is when it is received in Mauritius by him or on his behalf.

The nexus for taxation on income derived from the sale of goods by non-residents, both corporate and individual, is also established through the source rule. The source rule primarily considers the location where the income originates, emphasizing the significance of transactions occurring within Mauritian territory. This includes sales concluded within Mauritius or transactions involving goods that are physically present or used within the

jurisdiction. The place of conclusion of the sale and the contractual terms agreed upon are relevant factors in determining tax liability, as they provide insight into the nature and scope of the transaction's connection to Mauritius. In addition, companies engaged in the export of goods shall be liable to income tax at the rate of 3% on the chargeable income attributable to that export in accordance with section 44B of the Income Tax Act 1995. Section 2 of the Income Tax Act 1995 specifies that the export of goods includes the international buying and selling of goods by an entity in its own name, whereby the shipment of such goods is made directly by the shipper in the original exporting country to the final importer in the importing country, without the goods being physically landed in Mauritius.

Furthermore, an exemption of 80% on income derived from the sale of aircraft and its spare parts may be available in accordance with Sub-Part C of Part II of the Second Schedule of the Income Tax Act 1995. The exemption of 80% is subject to the conditions set out under section 23D of the Income Tax Regulations 1996 whereby the company has to carry out its core income generating activities ("CIGA") in Mauritius, employ directly or indirectly, an adequate number of suitably qualified persons to conduct its core income generating activities and incur a minimum expenditure proportionate to its level of activities.

2.7. Income from services (general and specific)

The basis of taxation of income derived from the performance of services in Mauritius follows the principles as set out under sections 4 and 5 of the ITA. Section 4 of the ITA imposes tax on all income, other than exempt income, derived by a person during the preceding year. The derivation of income is elaborated under section 5 of the ITA whereby income is deemed to be derived by a person where the income was derived from Mauritius, whether the person was resident in Mauritius or elsewhere, the source rule, or the income was derived at a time when the person was resident in Mauritius, whether the income was derived from Mauritius or elsewhere. Income tax is imposed at the rate of 15% on all income derived from services.

However, where foreign income derived from services by a resident has been subject to foreign tax, credit shall be allowed for foreign tax on the foreign source income of a resident of Mauritius against Mauritius tax computed up to the amount of Mauritian tax so chargeable in accordance with section 3 of the Income Tax (Foreign Tax Credit) Regulations 1996. Furthermore, where income was derived from certain categories of services specified under Sub-Part C of Part II of the Second Schedule of the ITA, an 80% exemption may be applied to the income derived from these activities. The income derived by collective investment scheme ("CIS"), closed-end fund, CIS manager, CIS administrator, investment adviser or asset manager, companies engaged in ship and aircraft leasing, companies involved in reinsurance and reinsurance brokering activities, companies involved in leasing and provision of international fibre capacity and the financing arrangement, asset management of aircraft and its spare parts and aviation advisory services are eligible to the partial exemption of 80% provided that the predetermined conditions set out under section 23D of the Income Tax Regulations 1996 are satisfied. The conditions to be satisfied include the carrying out the core income generating activities ("CIGA") of the company in Mauritius, employing directly or indirectly, an adequate number of suitably qualified persons to conduct the core income generating activities and incurring a minimum expenditure proportionate to its level of the activities. The Statement of Practice issued by the MRA specifies that for the purpose of the income derived from reinsurance and reinsurance brokering activities, the core income-generating activity includes predicting

and calculating risks, reinsuring against risks, administrating clients' cells, providing related services, preparing regulatory reports and providing clients technical advice in respect of reinsurance of liabilities.

Another type of tax being imposed on some categories of services is the Tax Deducted at Source ("TDS"). Section 111C of the Income Tax Act 1995 imposes tax to be deducted at the rate specified under the Sixth Schedule of the ITA, at the time any amount or sum in respect of those services made available by a payer to a payee. In accordance with 111B and 111C of the Income Tax Act 1995, TDS should apply at the rate of 5% on payment made in respect of services provided by resident accountant or accounting firm, architect, attorney or solicitor, barrister, engineer, interior decorator or designer, land surveyor, legal consultant, medical service provider, project manager in the construction industry, property valuer, quantity surveyor and tax adviser or his representative. Payments made to consultants other than those specified in the Fifth Schedule should be taxed at the rate of 3% in accordance with the Sixth Schedule of the Income Tax Act 1995. TDS shall also apply on payments made by any person, other than an individual, at the rate of 10%, to a non-resident for any services rendered in Mauritius and at 7.5% for residents and 10% for non-residents in respect of rent to any person, except where the payments are made to a body of persons or a person exempt from income tax under the Second Schedule of the Income Tax Act 1995 or by virtue of any other enactment or any arrangement for relief from double taxation. TDS at the rate of 0.75% is applied on payments made to contractors and subcontractors by any person, other than an individual. Payment in respect of commissions, to a provider of security services, cleaning services, pest management services and other ancillary services and by insurance companies to motor surveyors and any other person for repairs of motor vehicles of policy-holders payable by any person other than an individual is taxed at the rate of 3%.

2.8. Pensions

Any retirement pension not exceeding the reliefs, deductions, and allowances payable to a resident of Mauritius is not subject to tax. The retirement pension in excess of the reliefs, deduction and allowance is liable to tax at the prescribed rate.

2.9. Employment income and director fees

Concerning employment income pertaining to individuals working in Mauritius, nexus is established through their employment relationship. Employment income derived from services performed in Mauritius is subject to Mauritian income tax. This applies to both Mauritian residents and non-residents, with varying tax rates and exemptions depending on the individual's circumstances.

However, in the case of directors who derive director's fees are taxable in Mauritius under the source rule concept. Under section 74 (1) (aa) of the ITA directors' fees and any other similar payments derived by any person in his capacity as a member of the board of directors of a company which is resident in Mauritius, whether the services are performed in, or from outside Mauritius, is subject to tax in Mauritius.

Moreover, taxation of foreign source income under the remittance basis applies only to individuals, resident in Mauritius. Section 5(3) of the ITA provides important rules for the taxation of income derived from outside Mauritius by an individual resident in Mauritius.

The income is taxable in Mauritius if 'it is received in Mauritius by him or on his behalf or it is dealt with in Mauritius in his interest or on his behalf.

However, in the matter of Hilmi Mohammad Eshan Dilloo ("Hilmi") v/s Mauritius Revenue Authority ("MRA)[6] the Assessment Review Committee ("ARC") ruled that the taxation of income arising on a remittance basis is not interconnected with residency. The facts of the case are as follows:

Mr Hilmi Dilloo left Mauritius with his family and was living and working in Saudia Arabia. He owns a house in Mauritius from which he derives rental income. Mr Hilmi was assessed on the basis that he was resident as he owns a property in Mauritius and was also taxed on remittance of his savings to purchase the house. Mr Hilmi appealed on the basis that he was a non-resident and had remitted his savings in Mauritius but not his income.

The ARC found that residency and taxation of income on remittance are separate and that the relevant sections should be read in isolation. It determined that section 5(3) of the Mauritian Income Tax Act provides for a distinct method of taxation called the "remittance basis". The ARC thus ruled that according to section 5(3) not being subject to any other section of the law, there was no requirement to establish that the individual was a "resident" in "Mauritius" and that the MRA had correctly levied income tax on Mr Hilmi on the basis that he remitted income in Mauritius. However, in light of the evidence adduced by both the MRA and Mr Hilmi on the status of his "residence" under section 5(1) of the Mauritian Income Tax Act, the ARC as an alternative reasoning further determined that the applicant was resident in Mauritius at the material time. It held that "we are satisfied that he falls under the first limb of the definition provided under Section 73(1)(a)(i)", i.e., "a person who has his domicile in Mauritius and his permanent place of abode is not outside Mauritius." This decision was appealed by Mr Hilmi on the "remittance basis" issue and on the status of his "residence". A cross-appeal was also entered by the MRA on the "remittance basis". It is common ground between Mr Hilmi and the MRA that taxation on remittance basis is alien to the Mauritian jurisdiction. The appeals have been heard by the Supreme Court and the judgment has been reserved.

2.10. Capital gains

There are no capital gains taxes in Mauritius.

2.11. Payments or transactions between foreign persons

This section has already been covered in the above sections.

[6] Assessment Review Committee ruling ARC/IT/106/20.

3. Value Added Tax (or General Sales Tax)

VAT shall be charged on any supply of goods or services made in Mauritius, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

A taxable supply in respect of services means a supply of services performed or utilized in Mauritius, including a zero-rated supply and excluding exempt supply made by a taxable person in the furtherance of his business.

In the eventuality that the services are performed or utilized in Mauritius, it would be sufficient to create nexus from a VAT perspective.

4. Real estate taxes

There are no real estate taxes in Mauritius, however, in the case of immoveable property the acquiror is subject to registration duty whereas the seller is subject to land transfer tax. The rate of registration duty and that of the land transfer tax is 5% imposed on the market value of the property. The nexus regarding the immovable property arises at the time the deed of sale is registered. Non-residents are not allowed to purchase immoveable property in Mauritius except for those falling under the Property Development Scheme or any scheme approved by the Government of Mauritius.

Moreover, where special purpose vehicles ("SPV") are used to own immoveable property, the indirect transfer of the immoveable property which is carried out via transfer of shares will also trigger registration duty and land transfer tax on the market value of the immoveable property or the net assets of the SPV whichever is the lower.

5. Natural resources and energy taxation

In Mauritius, no tax is imposed on natural resources but there are VAT and excise duties as well as customs duty on petrol and gasoline in Mauritius. The nexus on imposing the VAT and excise duty is established at the time these products cross customs. In addition, the VAT on these products is charged by the supplier at the wholesale stage and remitted to the Mauritius Revenue Authority. The imposition of VAT at the wholesale stage eases the collection of revenue from the distributor rather than the retail.

6. Other (indirect) taxes

6.1. Financial transfer taxes

Not applicable in this instance.

6.2. Stamp duty

Stamp duty is payable at the time of registration, transcription, inscription or erasure of inscription as the case may be.

6.3. Customs and excise duties

All duty, excise duty and taxes shall be paid at the rate specified upon all goods entered unless such goods are entered to be warehoused in a bonded warehouse or are free of duty, excise duty and taxes. Payment of duty, excise duty and taxes on such type of petroleum products imported by the State Trading Corporation as the Minister may approve, shall be effected within –

(a) a period of 30 days from the date of importation of such products;
(b) a period of 30 days after removal of such products for home consumption from a bonded warehouse or freeport zone, as the case may be; or (c) such other period as may be prescribed.

6.4. Inheritance or wealth taxes

There is no inheritance or wealth taxes in Mauritius.

6.5. Digital services or economic activities

Mauritius proposed to introduce a digital service tax in the budget 2023/2024 but following debate on its introduction the Government did not go ahead with its introduction.

6.6. Shipping

No specific shipping or tonnage tax is applicable in Mauritius.

6.7. Other taxes

This header has been covered under the above sections.

6.8. Specific issues concerning federal/regional tax systems

Not applicable in Mauritius.

7. (Non-tax) Legal instruments & tax nexus

8. Nexus and legality (discretionary tax regimes)

9. Outlook and current policy debates

MNEs business are not limited to one business unit, nor do they operate in only one specific geographic market. Their consolidating financial statements do not necessarily provide the level of detail needed to apply Pillar One. The possibility of obtaining a segmenting product and market is very challenging. Therefore, to apply Pillar One in a reliable manner, the relevant revenue authority will have to incur additional costs to assess the veracity of the accounting data of the MNEs. Furthermore, in the absence of PE, the local tax authority would not have the statutory accounts of the MNEs but would therefore rely only on the information provided by the headquarters tax authority or MNEs.

Currently, there is no policy in respect of Pillar 1.

10. Overall assessment

The basis of taxation in Mauritius is namely the residence and the source base. Under the residence rule, a resident of Mauritius is taxable in respect of his worldwide income, while under the source rule the income earner is taxable only in respect of income that is derived from Mauritius regardless of where the income earner is resident. Non-resident conducting businesses are taxable in Mauritius if they create a PE. In the absence of PE, no tax will arise in Mauritius except in certain situations where there are no treaties and income is source in Mauritius such as interest and royalty income. As business models have evolved over the past years thus becoming more digital it becomes more and more difficult for Revenue Authorities to tax non-residents conducting business in Mauritius. The definition of PE needs to be revamped to capture those non-resident carrying out business in Mauritius so that the MRA get its fair share of income.

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