The Finance (Miscellaneous Provisions) Bill 2021

Tax overview

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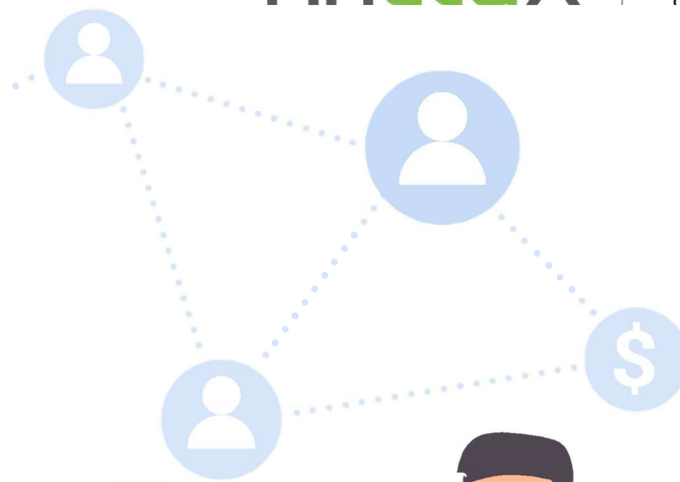
Following the delivery of the Mauritian budget for 2021-22 by Dr The Honourable Renganaden Padayachy on 11 June 2021, the Finance (Miscellaneous Provisions) Bill 2021 ('FMPB 2021') was issued on 16 July 2021.

The bill is scheduled for Second and Third reading on 27 July 2021 and, following parliamentary debate, may be subject to amendments. Whilst the bill follows, by and large, the measures announced in the budget speech and its accompanying annex, we note that the phrasing of the tax legislation gives rise to important concerns regarding time limits. We believe that the removal of the independent tax panel for the determination of tax fraud and hence, the power of the MRA to enquire into the tax affairs of and assess a taxpayer beyond three years is extremely serious. If the power to determine whether to go back further than 3 years will rest solely in the hands of the MRA, we believe that appropriate and publicly available safeguards should be put in place to protect the interests of taxpayers and to ensure that there is no conflict of interest for the MRA. Furthermore, we believe that the intention to amend the application of the arm's length provision from 1995 is concerning given that the Assessment Review Committee's ruling on this matter.

On the other hand, there are a number of positive tax measures targeted at helping the recovery of the manufacturing sector and to boost new economic sectors such as the pharmaceutical industry. The government is also seeking to help its global business industry whilst abiding to the guidelines of the Organisation for Economic Cooperation and Development on preferential tax regimes. The proposed amendments to the 'Declaration of Non-Residence' for trusts and foundations will impact the sector significantly. We hope that the fiscal incentives attached to new incentives such as the global premium visa and the extension of the partial exemption to investment dealers will help the sector. We set out the key tax measures of FMPB 2021 below.

Tax measures for businesses



1. Trusts and Foundations

During his budget speech, the minister announced that the tax framework in respect of trusts and foundations will be amended in the Income Tax Act 1995.

Accordingly, in a further bid to comply with the Organisation for Economic Cooperation and Development's BEP Action Point 5 regarding preferential tax regime, FMPB 2021 proposes to repeal the provisions in respect of the Declaration of Non Residence ('DNR').

The filing of a DNR with the MRA exempts a Mauritian resident trust or foundation from income tax in a year of assessment, insofar as, in the case of the trust, both the settlor and the beneficiaries of the trust are not tax resident in Mauritius during that year of assessment. Similarly, a foundation with founders and beneficiaries tax resident outside Mauritius can file a DNR and be exempt from income tax during a year of assessment.

If the DNR clause in ITA 95 is repealed, trusts settled and foundations set up on or after 1 July 2021 will no longer be entitled to file DNRs and will be subject to income tax on their taxable income.

However, FMPB 2021 states that trusts and foundations settled prior to 1 July 2021 will benefit from transitional provisions, allowing them to continue filing DNRs until the year of assessment 2024-25. The transitional provision will not apply to intellectual property assets acquired or created after 30 June 2021 or income derived from assets acquired or activities commencing after 30 June 2021.

Finctax note: *As the legislation prescribes that trusts and foundations are subject to tax as if they were companies, we note that substance conditions for 80% partial exemption should apply to them. We also understand that, given the scale of the changes proposed, Mauritius Finance will engage in discussions with the relevant parties on behalf of its stakeholders.*

2. Tax Incentives

- **Contributions to National COVID-19 Vaccination Programme Fund**

  If an enterprise contributes to the COVID-19 Vaccination Programme Fund during the period 30 June 2021, FMPB 2021 prescribes that it will be entitled to deduct the contribution from its net income at the time of submission of its income tax return.

  Any excess contribution to the fund may be set off against the company's net income for the 2 years following the year of contribution.

- **Double Deduction of expenditure incurred on market research and product development in Africa**

  Manufacturing companies will be entitled to 200% deduction on expenses incurred on market research and product development targeting the African market as from 1 July 2021. However, they will not be entitled to annual allowance the capital expenditure should they claim the deduction.

- **Investment Tax Credit**

  A manufacturing company may carry any unrelieved investment tax credit forward for a maximum of 10 years as from 1 July 2021.

- **Research & Development ('R&D') Tax Credit**

  200% deduction for research and development expenditure will be extended from June 2022 to June 2027. The expenditure must relate directly to the existing trade or business and includes expenditure incurred on innovation, improvement or development of a process, product or service. It can also include staff costs, consumable items and computer software.

  If the qualifying expenditure does not relate directly to the existing trade or business, the company will be entitled to a 100% deduction only in the year incurred up to 30 June 2027.

- **Acquisition of specialised software and systems**

  Companies that incur expenditure on the acquisition of specialised software and systems will be entitled to 200% deduction in the year of purchase as from 1 July 2021. Given the deduction claimed, it follows that such companies would not be entitled to any annual allowances on the cost of purchase.

- **Manufacturing companies - Expenditure incurred on local products by SMEs**

  A manufacturing company will be entitled to a 110% deduction as from 1 July 2021 on expenditure if:
  a) The expenditure relates to the direct purchase of products manufactured locally by SMEs;
  b) The SME's turnover does not exceed MUR 50 million; and
  c) The turnover of the manufacturing company (the purchaser) does not exceed MUR 100 million.

  Any expenditure on the direct purchase of products entitles the manufacturing company to 110% deduction. As such, it would seem that any associated costs such as the cost of transporting the products may also qualify for the increased deduction.

- **Manufacturing companies engaged in the medical, biotechnology and pharmaceutical sector**

  Companies operating in this sector will benefit from a reduced tax rate of 3% instead of 15% if:
  a) They hold an Investment Certificate issued by the Economic Development Board ('EDB'); and
  b) They satisfy substance conditions in respect of their activities without claiming partial exemption.

  This provision should apply from 1 July 2022.

  Finctax note: *It appears that these companies may also qualify for an 8-year tax holiday if they were incorporated after 30 June 2021. Our understanding is that the reduced rate will apply to a company in that sector, regardless of the type of income derived by the company (unlike the provision for companies engaged in export of goods or manufacturing activities in the freeport zone). Therefore, should the company derive investment income as a side activity, it appears that it will be subject to tax at 3%.*

  We expect that the Income Tax Regulations 1996 will set out the substance conditions referred to in the provision so that taxpayers may have clarity.

In addition to the reduced tax rate, manufacturing companies operating in this field will be entitled to a tax credit if they incur capital expenditure on the acquisition of patents. The tax credit will work as per the example below:

a) X Ltd is a manufacturing company engaged in the medical sector. It has profit before tax (after annual allowances) of MUR 30m for the year ended 31 December 2022.
b) During the year, it acquired patents costing MUR 5m.
c) Subject to meeting its substance conditions, its tax computation would be: 3% of MUR 30m = MUR 900,000
d) It is allowed a tax credit equivalent to 100% of the cost of the acquisition of the patent i.e. MUR 5m. Accordingly, its tax liability is reduced to nil.
e) X Ltd has unutilised tax credit of MUR 5m less MUR 900,000 i.e. MUR 4.1m available that it can carry forward against future tax liabilities for 5 years successively.

The tax credit is available even if the company deducts annual allowances. However, it is not entitled to the tax credit if it claims 200% deduction on the acquisition of the patent.

If the company ceases to operate in the above sectors or disposes/ transfers the patent within 5 years of acquisition of the patent, the tax credit will be clawed back proportionately, and income tax may become payable.

- **Higher education institutions set up in Mauritius**

Higher education institutions registered under the Higher Education Act will be subject to a concessionary tax rate of 3% of their net income as from 1 July 2022.

Tertiary institutions with an investment certificate issued by the EDB and that were incorporated after 30 June 2021 may qualify for an 8-year tax holiday. Higher education institutions include both private and public institutions as well as centres or branch campus of an overseas higher education facility.

- **Private health institution**

A private health institution will be entitled to 200% deduction on direct expenditure incurred in relation to international accreditation as from 1 July 2021.

- **Tax holiday**

Tax holidays granted to Family Offices (Single and Multiple) will be extended from 5 years to 10 years as from 1 July 2022.

Furthermore, whilst the activities listed below will no longer qualify for tax exemptions under existing provisions, some activities have been reclassified under the EDB Investment Scheme and will benefit from an 8-year tax holiday if the company holds an investment certificate under the scheme. It is intended that the investment certificate will become applicable as from the date of enactment. However, an official list of activities should be issued by the EDB:

Income generating activity	Likely to qualify under the EDB Investment Scheme
Income derived by a company from bunkering of low Sulphur Heavy Fuel Oil	No
Income derived by a company registered with the Board of Investment established under the Investment Promotion Act, as a company engaged in the provision of health services	Yes
Income derived from fishing activities by an industrial fishing company incorporated on or after 1 September 2016	Yes
Income derived from the manufacture of pharmaceutical products, medical devices and high-tech products by a company which has started its operations on or after 8 June 2017	Yes
Income derived from food processing activities by a company incorporated on or after 8 June 2017 and holding a registration certificate issued by the Economic Development Board to operate a food processing plant	Yes
Income derived by a company registered with the Economic Development Board and engaged in the manufacturing of automotive parts	No
Income derived by a company set-up on or after 10 June 2019 and engaged in the development of a marina	Yes
Income derived from inland aquaculture in Mauritius, by a company which has started its operations on or after 4 June 2020	Yes
Income derived by a company which has started its operations in Mauritius on or after 4 June 2020 and approved by the Higher Education Commission as being a branch campus of an institution which ranks among the first 500 tertiary institutions worldwide	Yes
Income derived from the manufacturing of nutraceutical products by a company which has started its operations on or after 4 June 2020	Yes

It appears that the exemption will no longer apply from the date that the act becomes gazetted. However, companies already benefitting from the exemptions will continue to do so.

3. Companies engaged in the export of goods or manufacturing activities in the freeport zone

Companies engaged in the export of goods or manufacturing activities in the freeport zone are subject to tax at 3%.

FMPB 2021 states that in order to benefit from the tax rate of 3%, such companies will need to apply for and hold an Export Development Certificate from the EDB as from 1 July 2022.

4. Partial Exemption

The scope of the partial exemption tax regime will be extended to cover investment dealers and activities relating to the leasing of locomotives and train including rail leasing. The extension is intended to begin as from year of assessment beginning 1 July 2022.

Finctax note: *The extension of the partial exemption regime to investment dealers is a welcome measure as it enables Mauritius to retaining existing businesses and gives it a competitive edge in attracting new companies operating in this sector.*

5. Tax payment under Advance Payment System ("APS")

Companies that are subject to tax at a lower rate than 15% will be able to compute their tax liability under APS at that lower rate.

Finctax note: *This is a welcome measure that corrects an anomaly in the legislation. The measure will be applicable from 1 July 2020 and it appears that the MRA may have to refund taxpayers who have been compelled to pay excess tax under APS.*

6. Corporate Social Responsibility ("CSR")

Companies opting to pay the presumptive tax of 1% on their turnover will be exempted from their CSR obligations. This measure will be applicable as from 1 July 2020.

Companies will be entitled to use 25% of their CSR fund to finance the restoration of a building designated as a national heritage under the National Heritage Fund Act 2003. The financing can be done either through implementing a CSR programme or via a non-governmental organisation. This measure will be applicable as from the date of enactment.

7. Taxation of investment in shares (such as dividends)

FMPB 2021 clarifies that income derived from an investment in shares in a company resident in Mauritius is within the scope of the Mauritian tax net.

Finctax note: *The clarification provides a distinction between companies that are tax resident in Mauritius (such as a domestic company or a company with a global business licence) and companies that may be incorporated in Mauritius but are not tax resident, such as an authorised company. This will apply as from 1 July 2022*

8. Transactions at arm's length

FMPB 2021 proposes to amend the anti-avoidance legislation in respect of arm's length transactions retroactively from the start of the Income Tax Act of 1995. It clarifies that for the provision to apply, the business activity does not only need to be carried out in Mauritius but can also be carried out from Mauritius.

Finctax note: *We believe that the clarification is to address the fact that companies holding a Global Business Licence argued that they do not fall within the arm's length provisions as they conduct business principally outside Mauritius. This has been established in the case of Bay Lines v The Director General of the MRA.*
In our view, it is deeply concerning that FMPB 2021 is seeking to apply the amendment from the date of commencement of the Income Tax Act i.e., 1995, given that there has been a judgement at ARC in favour of the taxpayer. We also note that the amendment is to come into effect as from 1 July 2022 but with retrospective effect.

9. Charitable institutions

All charitable institutions that receive donations will need to submit a statement of donation for each income year detailing the amount donated per person, including:

1) If the donor is an individual, the NIC of the donor; and
2) In other cases, the Business Registration Number of the donor and the name of the person making the donation.

The statement of donation needs to be submitted by 15 August following the end of an income year and it will apply as from income year commencing 1 July 2021.

Finctax note: *Whilst it is understandable that the MRA would wish for a record of donations to reconcile with tax deductions claimed by individuals in their returns, the draft legislation does not provide for a de-minimis limit and as such, it may prove to be an administrative burden to charitable institutions. It would have been perhaps more practical that charitable institutions issue gift aid certificates to individuals who wish to claim the deduction. It would also preserve the anonymity of donors.*

10. Record keeping

The Income Tax Regulations will be amended to include the type of records that a businessperson should keep at their business premises and make available in case of an audit by the MRA.

Finctax note: *Given the Government's intention to extend the assessment time limits as set out at Point 2 of Other tax measures below, it remains to be seen how far back taxpayers will be expected to retain records.*

TAX MEASURES FOR INDIVIDUALS

1. Reliefs and exemptions
(Proposed effective date: from income year starting 1 July 2021)

- The maximum exemption in respect of a child pursuing full-time tertiary education will be increased to MUR 225,000 irrespective of the child's place of study and the household's total income.

- In addition, relief for medical or health insurance premium is to be increased to MUR 20,000 for an individual and his first dependent. The individual will be entitled to MUR 15,000 by way of relief for each subsequent dependent up to 4 dependents.

- Individuals donating to a charitable institution through electronic means will be entitled to deduct the amount of the donation from their net income as from 1 July 2021. The deduction will be capped to a maximum of MUR 30,000 per income year. The donation will not be tax deductible if the charitable institution fails to submit its Statement of Donation to the MRA, unless the taxpayer can provide evidence that they made the donation.

- If an individual contributes to a personal pension scheme approved by the Financial Services Commission ('FSC'), they will be entitled to an exemption of a maximum of MUR 30,000.

2. Self-employed individuals

A self-employed individual is not required to submit an income tax return if the individual's:
- net income less than MUR 325,000;
- gross income less than MUR 2million; or
- income did not suffer from any tax deduction at source.

FMPB 2021 states that self-employed individuals falling in the above category will also need to submit a simplified income tax return specifying their net income and any other income derived during the year. If the self-employed individual is not likely to derive income in future, the individual may apply for a filing waiver from the MRA.

Finctax note: *We believe that this is a good initiative from the Government to prevent further abuse of the self-employed wage assistance scheme. It is important to note that this measure will apply from year of assessment 2021-22 i.e. for income year starting 1 July 2020 to 30 June 2021.*

3. Calculation of IET for bedridden next of kin dependent

A taxpayer may claim an Income Exemption Threshold ('IET') in respect of his dependents if the dependents' net income and exempt income is lower than a specified amount. If it is lower than the specified amount, the dependents' net income is added to the taxpayer's net income.

According to FMPB 2021, if any of the dependents are bedridden next of kin, the benefits received under the National Pensions Act by the bedridden next of kin (basic retirement pension, basic invalidity pension, carer's allowance and contributory invalidity pension) will not count towards the specified amount. As such, it will not be included in the taxpayer's net income. This measure is intended to effective from year of assessment 2021-22 i.e. for income year starting 1 July 2020 to 30 June 2021.

4. Contributions to COVID-19 Vaccination Programme Fund

If an individual contributes to the COVID-19 Vaccination Programme Fund during the year ended 30 June 2021, he may deduct the amount contributed from hisr net income at the time of submission of his income tax return.

Furthermore, the individual will be entitled to carry forward any unrelieved deduction to the next income year for a maximum of 2 successive income years.

5. Tax Holiday

The emoluments of an asset manager, a fund manager or asset and fund manager who manages an asset base of USD 50 million and more will be eligible to a tax holiday of 10 years. Holders of a licence issued on or after 1 September 2016 with an asset base of USD 100 million were previously entitled to a tax holiday of 5 years which will now be extended by another 5 years. This measure will be applicable from income year 2021/22 i.e. from year commencing year 1 July 2021.

6. Premium Visa

Non-citizens of Mauritius will be able to apply for a Premium Visa under the Premium Visa Scheme. The visa allows non-citizens to stay in Mauritius for a period of at least one year with the possibility of renewal.

The benefits to the visa holder are as follows:

(i) Whilst they will be tax resident in Mauritius by virtue of spending 183 days or more in the country, their Mauritian-sourced income (e.g. emoluments for work performed remotely in Mauritius) will be taxed on a remittance basis, i.e., in the same manner as foreign-sourced income;

(ii) money spent in Mauritius through their foreign credit or debit card will not be deemed a remittance to Mauritius i.e., it will not be subject to income tax; and

(iii) income brought and deposited in a bank account in Mauritius will not be subject to tax if a declaration is made by them, confirming that the required tax has been paid in their country of origin or residence.

The benefits conferred under the scheme apply retroactively as from 1 November 2020.

Other tax measures

1. VAT Measures

a) The bill proposes following items are to be zero-rated for VAT purposes:
   - The preparation and supply of dumplings;
   - residential care services; and
   - live animals for training and breeding purposes.

b) FMPB 2021 states that taxable persons who undertake activities under the Ninth Schedule of VAT Act should hold an investment certificate from the EDB to benefit from the VAT exemption.

c) The National Empowerment Foundation and the New Social Living Development Ltd will be made exempt bodies for VAT purposes for the construction of social housing. This will be deemed to come into operation on 3 February 2021.

d) The threshold for filing of monthly VAT return will be based on annual taxable supplies of MUR 10 million instead of turnover of MUR 10 million.

e) As announced in the budget, the criteria for the refund of VAT on construction of a house or residential apartment have been reviewed as follows:
   - the cost of construction/purchase price of a residence should not exceed MUR 3 million;
   - the maximum limit on the amount of refund will be MUR 300,000;
   - the household income eligibility threshold for the refund will be MUR 1 million per annum; and
   - the refund will be applicable on the construction or purchase of a first residence.

2. Time limits for MRA enquiry and assessment powers

The MRA previously could not request information in respect of a taxpayer's affairs or assess a taxpayer beyond 3 years of assessment. Currently, if the MRA wishes to go back further than 3 years, they need to apply to the Independent Tax Panel by demonstrating that the taxpayer had committed fraud or had not submitted a tax return when they were liable to tax. The panel would then deliberate and authorise the MRA to proceed.

FMPB 2021 states that the MRA will no longer have to approach the panel and will have authority to pursue and assess a taxpayer beyond 3 years in case of non-submission of tax return or fraud.

If the matter relates to VAT, the MRA currently cannot request or assess a taxpayer in respect of a period beyond 4 years preceding the last day of the taxable period unless authorisation of the Independent Tax Panel is obtained by demonstrating that the taxpayer had committed fraud or had not submitted a tax return when liable to tax. FMPB 2021 intends to remove the authorisation process of the Independent Tax Panel and leave matters to the discretion of the MRA to decide if there was fraudulent conduct. The MRA can also request information and assess a taxpayer beyond the current time limits if they view that the taxpayer has 'willfully neglected' to comply with the VAT Act. This measure is to take effect as from the date of enactment.

Finctax note: *Whilst we are strongly in favour of cracking down on tax evasion and believe that taxpayers should pay their taxes fairly, we are of the view that the MRA should not be given such extensive powers based solely on an 'opinion' that may be subjective. If the MRA's performance review of its officers is linked to their assessment success rates, it shows a clear conflict of interest in our view.*

At the very least, in order to protect the interests of taxpayers, the MRA should be held accountable to publicly available standards to determine whether there is an indication of fraud or 'willful neglect.' We believe that the amendment to the VAT statute should also be clearer as it draws a distinction between fraud and willful neglect, but it does not apply a time limit to willful neglect, nor does it define the terms. Fraud is a serious allegation both in terms of reputational and financial damage and in order to protect taxpayers, it would be wrong to allow the MRA unfettered powers without being held accountable.

3. Duty of confidentiality

Officers of the MRA are bound by a duty of confidentiality under the Income Tax Act 1995. However, FMPB 2021 allows them to exchange information with the EDB in respect of monitoring of tax exemptions. The MRA will also be entitled to share information in respect of money laundering and drug-related offences with additional bodies such as the Independent Commission Against Corruption and the Assistant Commissioner of Police and above ranks in the police department

For the purpose of VAT, officers will be allowed to share information with the EDB.

4. Tax Arrears Settlement Scheme (TASS)

The TASS has been extended to small and medium enterprises such that they will benefit from a full waiver of penalties and interest on tax arrears outstanding as at 31 October 2020. They should register for the scheme by 31 December 2021 and must make payment of any outstanding arrears by 28 June 2022.

5. Tax Ruling

The time limit of 30 days for the MRA to give a ruling will commence as from the date of submission of all documents and information requested by the MRA.

6. The Social Contribution and Social Benefits Bill 2021 ('SCSBB 2021')

We take the opportunity to also comment on the SCSBB 2021. The bill is set to replace the Contribution Sociale Generalisée ('CSG') Regulations 2020 and proposes to amend the application of the regulations as follows:

1) Employers and employees will be subject to the CSG on their statutory end of year bonus in addition to their basic salary;
2) Self-employed individuals currently pay CSG at the rate of MUR 150 per month regardless of their income. The bill proposes that they pay CSG based on the net income per month. For example, if their net income is between MUR 10,001 and MUR 50,000, they will be liable to CSG at the rate of 1.5% on 90% of their net income.

Finctax note: *The MRA may refuse to pay the self-employed wage assistance scheme if the self-employed individual has not paid their CSG.*

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