

Finance Act 2018

INTRODUCTION

The Finance (Miscellaneous Provisions) Act 2018 (the “Finance Act 2018”) which contains provisions for the implementation of measures announced in the Budget Speech 2018-2019 was passed by the National Assembly on 31 July 2018. It is expected that the legislative amendments will be substantiated by the issuance of Regulations and Practice Notes. Please find enclosed a summary of the relevant key amendments.

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1. Changes for Global Business Category One Companies (GBC 1)

- As from 1 January 2019, no GBC 1 licence will be issued by the Financial Services Commission (FSC) in Mauritius.
- There will be only one type of Global Business Licence issued by the FSC (no longer GBC 1 and GBC 2 licences). GBC 1 will be known as Global Business Licence (GBL) as from 1 January 2019.
- A GBC 1 licensed on or before 16 October 2017 will be grandfathered until 30 June 2021. As from 1 July 2021, the company will be deemed to hold a GBL.
- A GBC 1 licensed after 16 October 2017 will be grandfathered until 31 December 2018. As from 1 January 2019, the company will be deemed to hold a GBL.
- Where the majority of shares or voting rights or the legal or beneficial interest in a resident corporation are held or controlled, as the case may be, by a person who is not a citizen of Mauritius and such corporation proposes to conduct or conducts business principally outside Mauritius or with such category of persons as may be specified in the FSC Rules, it shall apply to the FSC for a Global Business Licence.
- With a view to satisfy the substance requirements, a holder of a Global Business Licence shall, at all times:
 - Carry out its core income generating activities in, or from, Mauritius;
 - Employ, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities;
 - Have a minimum level of expenditure which is proportionate to its level of activities;
 - Be managed and controlled from Mauritius; and
 - Be administered by a Management Company.

2. New Tax Regime for Global Business Licence Companies

- Deemed Foreign Tax Credit currently available to GBC 1 will be abolished as from 1 January 2019
- An income tax exemption of 80% (Partial Exemption Regime) shall be introduced and shall apply on the following streams of income:
 - Foreign source dividend, provided that the dividend has not been allowed as a deduction in the source country
 - Foreign source interest
 - Profit attributable to a permanent establishment which a resident company has in a foreign country
 - Foreign source income derived by a collective Investment Scheme (CIS), Closed End Fund, CIS Manager, CIS Administrator, Investment Advisor or Asset Manager licensed or approved by the FSC
 - Foreign income derived by a company engaged in ship and aircraft leasing
- GBL companies may still claim credit for actual foreign tax suffered
- No Foreign Tax Credit will be allowed on foreign source income where the 80% exemption has been claimed by the GBL
- The 80% exemption will be available to a company provided the company satisfies the substance requirements relating to its business activities.
- The definition of foreign source income will be changed to "income which is not derived from Mauritius" as compared to the previous definition of "income which is not derived from Mauritius and includes in the case of a corporation holding a GBC 1 licence, income derived from its transactions with non-residents or corporations holding a Global Business Licence under the Financial Services Act."
- Corporations which have been issued with GBC 1 licence **on or before 16 October 2017** will continue to benefit from the current status of a GBC 1 company until 30 June 2021. Therefore, foreign income of GBC 1 licenced on or before 16 October 2017 shall include income from transactions with non-residents and other GBL companies up to 30 June 2021.
- Corporations which have been issued with a GBC 1 licence after 16 October 2017 will continue to benefit from the current status of a GBC 1 company until 31 December 2018.

3. Changes for Global Business Category Two Companies (GBC 2)

- As from 1 January 2019, no GBC 2 licence will be issued by the FSC.
- Existing GBC 2 licences will be abolished.
- Transitional period will be available to GBC 2 companies
 - GBC 2 licenced on or before 16 October 2017 shall be grandfathered up to 30 June 2021 and GBC 2 licence shall lapse on 30 June 2021
 - All GBC 2 licences issued after 16 October 2017 shall lapse on 31 December 2018
- Regulations and Practice Notes are expected to be issued to clarify on the next steps following lapse of licence.
- GBC 2 will be required to comply with the requirements for GBL if they want to be issued with a GBL from the FSC else the GBC 2 will have to apply for an authorisation from the FSC.
- Introduction of a new type of company known as "Authorised Company" as from 1 January 2019
- A company shall apply, through a management company, to the FSC for an authorisation if it meets the following criteria:
 - Companies incorporated under the Companies Act
 - Majority of shares / voting rights / legal / beneficial interest are held by a person who is not a citizen of Mauritius
 - Business is conducted principally outside of Mauritius (certain activities are not allowed)
 - The place of effective management is outside Mauritius
- An Authorised Company is treated as non-resident for tax purposes in Mauritius
- An Authorised Company will be required to file an annual tax return with the Mauritius Revenue Authority.
- Companies which have been issued with a GBC 2 licence on or before 16 October 2017 shall continue to be exempted from income tax until 30 June 2021.

4. Amendments to Companies Act 2001

Company to maintain Share Register

- Share registers are now required to be maintained for a period of at least 7 years from the date of the completion of a transaction, act or operation to which it relates.
- It is now an offence if a Company fails to maintain a Share Register including names and last known addresses of the beneficial owners or the ultimate beneficial owners where the shares are held by a nominee. The Company shall, on conviction, be liable to a fine not exceeding MUR 300,000.
- "Beneficial owner" or "ultimate beneficial owner" definition has been updated to mean a natural person who holds by himself or his nominee, a share or an interest in a share which entitles him to exercise not less than 25% of the aggregate voting power exercisable at a meeting of shareholders.

5. Amendments to Limited Liability Partnerships Act 2016

Requirement to maintain Register of Partners and Disclosure of Beneficial Owners

- Every Limited Liability Partnership ("LLP") shall keep a register of partners at its registered office. Where a partner is a nominee, the name of his or its beneficial owner or ultimate beneficial owner (i.e natural person having not less than 25 per cent of the aggregate voting power exercisable at a meeting of the partners) shall be disclosed in the register of partners.
- Every LLP shall, within 14 days from the date on which an entry or alteration is made in the register of partners, file with the Registrar such entry or alteration.

Removal from Register

- Any partner of an LLP may request the Registrar to remove the LLP from the Register provided that a written statement from the Director-General and the Chief Executive to the effect that there is no objection to the LLP being removed from the Register accompanies the request.

6. Amendments to Limited Partnerships Act

Beneficial Ownership and Register of Partners

- Inclusion of a definition for “beneficial owner” or “ultimate beneficial owner”:
- “beneficial owner” or “ultimate beneficial owner” means a natural person who holds by himself or by his nominee not less than 25 per cent of the aggregate voting power exercisable at a meeting of the partners.
- Where the limited partner is a nominee, the name of the beneficial owner or ultimate beneficial owner should be shown in the Register of Partners.
- Every limited partnership shall, within 14 days from the date on which an entry or alteration is made in the Register of Partners, file with the Registrar such entry or alteration.

Removal from Register

New section introduced to allow for Removal from Register by two additional means:

- Removal by Registrar
- Removal following request by a Partner

Removal by Registrar

- Where the Registrar is satisfied that –
 - a limited partnership has ceased to carry on business; and
 - there is no other reason for the limited partnership to continue in existence, he shall, by notice in writing, inform the limited partnership that he proposes to remove it from the Register.
- Where a limited partnership has failed to pay any fee due under this Act, the Registrar shall, by notice in writing, inform the limited partnership that its name shall be removed from the Register if it fails to pay the fee within 30 days from the date of the notice.
- Where a limited partnership fails to file a financial statement, a financial summary or an annual return, the Registrar shall, by notice in writing, inform the limited partnership that its name shall be removed from the Register if it fails to file the financial statement, financial summary or annual return within 30 days from the date of the notice.

Removal following request by Partner

- Any partner of a limited partnership may, in such form as the Registrar may approve, request the Registrar to remove the limited partnership from the register provided that a written statement from the Director-General and the Chief Executive to the effect that there is no objection to the LLP being removed from the Register accompanies the request.

Restoration of name to Register

- Where the name of a limited partnership has been removed from the Register, the limited partnership, a creditor or a liquidator may apply to the Court, within 5 years from the date of removal, to have the name of the limited partnership restored.
- Prior to ordering the restoration, the Court should be satisfied that the limited partnership was still carrying on business or that there was another reason which prevailed for it to carry on business and that it would be fair and reasonable for the limited partnership to be restored.

7. Amendments to Income Tax Act

Tax Holidays

- The first 5 years of Income derived by a company from activities carried out as a project developer or project financing institution in collaboration with the Mauritius Africa Fund for the purpose of developing infrastructure in the Special Economic Zones.
- The first 8 years of Income derived by a person from any activity under the sheltered farming scheme.
- The first 8 years of Income derived by a company registered with the Economic Development Board and engaged in the manufacturing of automotive parts.

Reduced Tax Rate

- The 3% corporate tax rate presently available to companies engaged in export of goods will be extended to companies engaged in international buying and selling of goods where the goods are being shipped directly from the exporting country to the importer country.

Freeport

- The exemption applicable to Freeport operators and private Freeport developers will be removed. However, Freeport licences issued on or before 14 June 2018 will continue to benefit from the current tax exemption until 30 June 2021 (please refer to the section relating to Amendments to the Freeport Act 2004 below).

Corporate Social Responsibility (“CSR”)

- Companies may continue to contribute 50% of CSR (instead of 75%) to the MRA provided they receive approval from the National CSR Foundation
- Companies benefiting from tax holidays shall be required to contribute to CSR
- Companies will not be allowed to offset any unused tax credit against any amount of CSR payable
- Freeport operators and private Freeport developers will not be subject to CSR

Tax Deduction at Source ("TDS")

- TDS of 3 % will apply on payment of commissions made by any person, other than an individual.
- The current TDS rate of 5% on rental payments is increased to 10% where the recipient is a non-resident
- TDS on payment of Director's fees to corporate bodies is abolished.

8. Amendments to the Freeport Act 2004

Tax Holidays

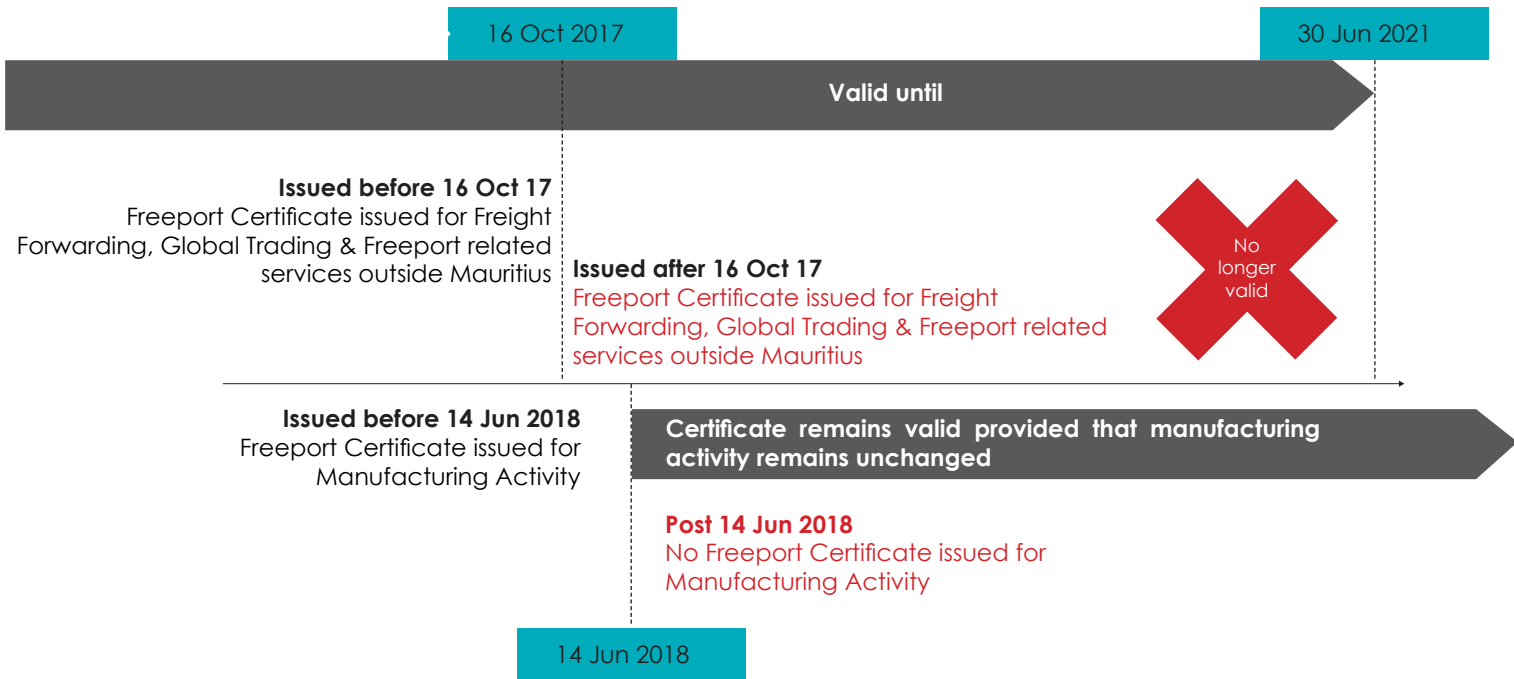
- Removal of restriction on activity: Activity carried out in the Freeport zone need not be for the re-export and export of goods and the quota for goods that can be sold to the local market has been abolished. Goods can now be supplied to the local market subject to the applicable import custom formalities.
- Introduction of storage time limits for warehoused goods as follows:

Goods	Storage Period*
Goods entered on or before 30 September 2018	42 months
Goods entered on or after 1 October 2018	24 months

** Non-clearance of the good within the given timeframe may result in penalties as prescribed by the Customs Act*

- Maintenance of heavy-duty equipment is now a permissible activity in the Freeport zone.
- Activities no longer permitted in the Freeport:
 - Freight Forwarding Services;
 - Manufacturing Activities;
 - Global Trading; and
 - Freeport related services outside Mauritius for advisory, marketing, engineering, project management, technical support and related services (the "**Ceased Activities**").

● **Grandfathering provisions for Ceased Activities:**



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