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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group
Subject:	Mauritius' Partial Exemption regime (MU010) – Final description and assessment

ROLLBACK REVIEW PROCESS (SEPTEMBER 2019)

On July 25 2019, the Mauritian Parliament adopted the Finance Bill 2019 which includes amendments to the relevant legislation[1]. On 16 August 2019, Mauritius subsequently adopted additional regulations to complete the legal framework of the regime[2].

These amendments were assessed as follows by the COCG at its meeting of 13 September 2019:

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Mauritius – Partial Exemption regime (MU10)	X	?	X	?	X	X	X

V = harmful
X = not harmful

[1] http://mauritiusassembly.govmu.org/English/bills/Documents/intro/2019/bill1619.pdf
[2] http://pmo.govmu.org/English/News/Pages/Cabinet-Decisions-taken-on-16-AUGUST-2019.aspx

Explanation:

Gateway criterion - Significantly lower level of taxation:

"*Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code*"

The general tax rate in Mauritius is 15%. However, as a result of the reform enacted by the Finance Bill 2018, Mauritius introduced the Partial Exemption regime where 80% of specified income of global business companies will be exempted from corporate tax.

The income categories exempt from tax are:

1. Partial Exemption for foreign source dividends,
2. Exemption for profits attributable to a foreign PE,
3. Exemption for dividends and interest income derived by a company whether from a local source or foreign source; and
4. Exemption for income from provision of specified financial services (investment management and investment advisory activities conducted in and from within Mauritius, ship and aircraft leasing, CIS/CEF).

This measure provides for a significant lower level of taxation and is therefore potentially harmful under the Code of Conduct.

Criterion 1 – Targeting non-residents:

"*whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents*"

The partial exemption regime is available to both residents and non-residents and does not require that the beneficiaries carry out transactions only with non-residents.

There is no information on the de facto effect of the measure. Reference should continue to be made to previous publicly available information which the Group has already concluded that it is insufficient to evaluate the de-facto effect. However the usage of this regime should be monitored by the Group in order to establish if a situation of de facto ring-fencing exists.

Criterion 2 – Ring-fencing:

"*whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base*"

As regards criterion 2 the division between criteria 2a and 2b is done in the same way as in the case of criterion 1 (i.e. de jure interpretation and de facto analysis). In general, a measure is caught by criterion 2 if the advantages are ring-fenced from the domestic market so that they do not affect the national tax base. In most cases, the evaluation against criterion 2 follows closely that of criterion 1. What has been written under criterion 1a often applies analogously to criterion 2a and 2b.

Criterion 3 - Substance:

"*whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages*"

Budget law 2018 already set forth certain substance requirements that were however not deemed sufficient given the specific features of the Partial Exemption regime. In particular, the substance requirements did not foresee any safeguards on outsourcing and there were no sufficient anti-abuse rules.

On 16 August 2019, Mauritius introduced Regulation 23D, which specifies the conditions to outsource activities. The preferential taxation is now applicable only if:

- There is adequate monitoring of the outsourced activity;
- The outsourced activity is conducted in Mauritius;
- The economic substance of service providers will not be counted multiple times by multiple companies when evidencing their own substance in Mauritius.

Mauritius also detailed the specific core income generating activities (CIGAs) to be carried out in relation to funds and investment schemes (Collective Investment Scheme, Closed-end Fund CIS Manager CIS Administrator Investment Adviser or Asset Manager), based on the nature of the company benefitting from the partial exemption. If companies do not meet these requirements, the tax advantage will be denied. Mauritius has also outlined how the tax administration intends to monitor the application of those safeguards for outsourced activities.

With regard to anti-abuse rules, Mauritius has coupled its general anti-abuse rule (Art. 90 of the Income Tax Act) with CFC rules introducing art. 90A in the Income Tax Act and issuing Regulation 23F under Section 161 of the ITA. In summary, CFC rules will be triggered for any artificial arrangement which has been put in place for the essential purpose of obtaining a tax benefit. CFC rules apply based on a minimum profit threshold and operating costs and a minimum level of taxation applied in the CFC jurisdiction. The definition of control of an entity includes associated enterprises and explicitly covers permanent establishments (PE) of Mauritian resident companies. The rules to account profits of CFC are in substance aligned to ATAD 'model B'.

Criterion 4 – Internationally accepted principles:

"*whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD*"

The measures do not contain such elements that would be relevant from the point of view of internationally accepted principles as referred to in criterion 4 of paragraph B of the Code.

Criterion 5 - Transparency

"whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way"

All preconditions necessary for the granting of a tax benefit should be clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

Grandfathering

Mauritius did not include any grandfathering provision. Requirements set forth in regulation 23D become applicable from 1 July 2019 and CFC rules are applicable since the Budget law was gazetted.

Overall assessment:

In the light of the assessment made under all Code criteria, the regime is considered as overall not harmful.

The Code of Conduct Group meeting of 13 September 2019 approved the rollback of the MU010 regime. This conclusion was endorsed by the ECOFIN Council on 10 October 2019.

Annex 1: Assessment of the old MU010 regime in 2018 (standstill review)

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	1a	1b	2a	2b	3	4	5
Mauritius – Partial Exemption regime (MU10)	X	?	X	?	V	X	X

V = harmful
X = not harmful

Explanation:

Gateway criterion - Significantly lower level of taxation:

"*Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code*"

The general tax rate in Mauritius is 15%. However, as a result of the reform enacted by the Finance Bill 2018, Mauritius introduced the Partial Exemption regime where 80% of specified income of global business companies will be exempted from corporate tax.

The income categories exempt from tax are:

1. Partial Exemption for foreign source dividends,
2. Exemption for profits attributable to a foreign PE,
3. Exemption for dividends and interest income derived by a company whether from a local source or foreign source; and
4. Exemption for income from provision of specified financial services (investment management and investment advisory activities conducted in and from within Mauritius, ship and aircraft leasing, CIS/CEF).

This measure provides for a significant lower level of taxation and is therefore potentially harmful under the Code of Conduct.

Criterion 1 – Targeting non-residents:

"*whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents*"

The partial exemption regime is available to both residents and non-residents and does not require that the beneficiaries carry out transactions only with non-residents.

There is no information on the de facto effect of the measure. However on the basis of publicly available information (from the Mauritius Financial Services Commission) collected by the Commission Services on the usage of the GBL 1, regime it appears that the Partial Exemption regime will mostly benefit companies not doing business in Mauritius.

Licensees under domestic regime

- Financial service providers: 40
- Specialised financial services / institutions: 30
- Corporate trust service providers: 181
- Insurers: 274
- Pensions: 65
- Intermediaries: 238

Total of domestic licensees: 828

Licensees under Global Business Regime

- GBC 1: 10 756
- GBC 2: 10 688

Total of offshore licensees: 21 444

On the basis of the above figures, a preliminary assessment would suggest that the 80% exemption on income from financial services would mostly benefit companies not doing any business in Mauritius. Mauritius has challenged these statistics and disagrees with our conclusions. According to Mauritius, 1,153 (or less) GBL1 companies are likely to benefit from the new regime, and 1,700 non-GBL companies are expected to benefit.

The usage of this regime should be monitored by the Group in order to establish if a situation of de facto ring-fencing exists.

Criterion 2 – Ring-fencing:

"*whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base*"

As regards criterion 2 the division between criteria 2a and 2b is done in the same way as in the case of criterion 1 (i.e. de jure interpretation and de facto analysis). In general, a measure is caught by criterion 2 if the advantages are ring-fenced from the domestic market so that they do not affect the national tax base. In most cases, the evaluation against criterion 2 follows closely that of criterion 1. What has been written above under criterion 1a and 1b also applies to criterion 2a and 2b.

Criterion 3 - Substance:

"*whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages*"

According to the standard practice for the evaluation of a measure against criterion 3, a measure is found harmful under this criterion if there are no specific requirements with regard to real economic activities and notably any requirement with respect to employment obligations.

While the Partial Exemption regime does have substance requirements, they are not entirely in line with international best practice, in particular in terms of how they treat outsourcing. Outsourcing should not be a practice used to circumvent the need for economic substance within a jurisdiction. Therefore, the outsourcing of core income generating activities is only permitted to occur within the jurisdiction concerned. In addition the primary entity should have the capacity to properly supervise and control the work of the entity to which the core functions have been outsourced; and the substance of the outsourcing provider (employees, expenditure and premises) should not be used multiple times by multiple primary entities that outsource to the same outsourcing provider. Jurisdictions should demonstrate that outsourcing is not used to circumvent compliance with the requirements.

Regimes such as the partial exemption regime should also be properly contained by appropriate anti-abuse measures in order to tackle tax-planning opportunities.

Paragraph L of the Code of Conduct states that: "*anti-abuse provisions or countermeasures contained in tax laws and in double taxation conventions play a fundamental role in counteracting tax avoidance and evasion*". In past assessments, the Code Group has taken into account, in the overall assessment of various regimes, the existence of appropriate anti-abuse rules.

Such measures would include CFC rules or a switchover clause, in line with the agreed Code Guidance and previous assessments. In response to our queries Mauritius outlined certain provisions in its legislation such as the application of the arm's length test and a general anti-abuse rule. However, our understanding is that the Mauritius general anti-avoidance rule only covers transactions aimed at avoiding tax that should have been due in Mauritius. Therefore any schemes involving Mauritius but aimed at eroding other countries' tax bases would not be covered. Mauritius did not agree to introduce CFC rules or a switchover clause.

Criterion 4 – Internationally accepted principles:

"*whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD*"

The measures do not contain such elements that would be relevant from the point of view of internationally accepted principles as referred to in criterion 4 of paragraph B of the Code.

Criterion 5 - Transparency

"whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way"

All preconditions necessary for the granting of a tax benefit should be clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

Overall assessment:

The overall assessment of this regime is harmful.