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Global Tax Alert

Mauritius amends tax laws to exempt certain land transactions from income tax

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Executive summary

On 27 May 2019, the Mauritian Finance Minister extended the categories of exempt income so that certain land transactions are now exempt from income tax. The amendment is effective as from 1 January 2016 and impacts persons that dispose of undeveloped land for projects that are within the scope of the Property Development Scheme and Smart City Scheme.

The amendment was made through the Income Tax (Amendment of Schedule) (No. 2) Regulations 2019 and should be read in conjunction with the Investment Promotion (Property Development Scheme) Regulations 2015 and the Investment Promotion (Smart City Scheme) Regulations 2015. The aforesaid regulations also provide for certain fiscal incentives. Such incentives have not been addressed in the *Income Tax Act*, *Land (Duties and Taxes) Act*, *Registration Duty Act* and the *Value Added Tax Act*.

Detailed discussion

Mauritius does not have a capital gains tax regime; this has been confirmed in various forums, including the Privy Council. The fact that the exemption refers to gains or profits provides additional certainty of the income tax treatment for

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the alienator of any undeveloped land. The alienator may be an individual or any entity, irrespective of its residence status. The exemption applies if the land is disposed to one of the following companies:

a. A smart city company

b. A smart city developer

c. The holding company of a smart city company

d. The holding company of a smart city developer

e. A PDS company

f. The holding company of a PDS company

Consideration for the transaction should be shares in the transferee company so that the alienator would become a shareholder in the transferee company. The allowable cost for the purposes of computing the taxable profit of the smart city company, smart city developer or PDS company, as the case may be, is the market value of the land on the date on the transfer.

The Investment Promotion (Property Development Scheme) (Amendment) Regulations 2019 introduced an exemption providing that a PDS company that implements a project for senior living is exempt from income tax for a total period of five years on income from residential projects for the exclusive use by retired persons including the provision of services and related facilities. The exemption starts from the date of issuance of the PDS Certificate where the building dedicated to senior members has already been constructed. For a new building, it starts as from the year the company begins operations. The company is not exempt from the 2% Corporate Social Responsibility.

Implications

a. The amendment is a positive development for persons who wish to develop their undeveloped lands through either the Smart City or PDS Schemes.

b. The application of the amendment in the context of a holding company requires clarification, since one of the conditions to qualify for the exemption is with respect to the amount of deductible expense for the land for the relevant project company.

c. A person that deals in immovable properties would also be able to benefit from the exemption. If the person has property transactions that are not exempt, this would imply that an apportionment would have to be performed for any common expenses.

d. The effective date of 1 January 2016 confirms the policy of the Mauritian Government to promote PDS and Smart City projects, particularly for foreign nationals.

e. With the retrospective effect of the amendment, it is not clear if the Mauritius Revenue Authority (MRA) would apply penalties for the late submission of an annual tax return, where an amended tax return is submitted solely as a result of the amendment. There may well be cases of tax refunds, and businesses should consider all the related implications in the context of an amended tax return.

f. It is critical that the market value of the land on the date of the transfer is accurate. An independent valuation is required even though the parties to the transaction may be unconnected. Any overstatement in the value of the land has a direct tax consequence on the taxable profit of the developer. In that respect, the Budgetary measure announced on 10 June 2019 to make public the particulars on immovable property transactions may be useful.

g. With the implementation of this regulation, bare lands that are transferred to the qualifying entities are effectively not subject to any tax. Any related expenses incurred by the alienator would not qualify for any relief; likewise any value added tax incurred would not be recoverable in view of the fact that the disposal of any land is an exempt supply.

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