

MAURITIUS: INVESTMENT INTO AFRICA

Craig Fulton & Anthony Whaley – January 2010

The African continent, while not unscathed by the global recession, has shown a fair degree of resilience, providing significant opportunities with its under penetrated markets and unleveraged business opportunities. Economic expansion in this region, particularly in Sub-Saharan Africa, is being supported by minerals and energy mainly, but also by a broad base of sectors including agriculture, technology, telecommunications, media and financial services. These industries are attracting massive foreign direct investments (FDI), a large chunk of which is coming through private equity. Flows of FDI to Africa have been increasing significantly during the last decade and Mauritius has a vital role to play in this respect since the country possesses invaluable comparative advantages.

Mauritius: An ideal investment platform

Mauritius combines the traditional advantages of an offshore financial center (no capital gains tax, no withholding tax, no capital duty on issued capital, confidentiality of company information, exchange liberalization and free repatriation of profits and capital etc.) with the distinct advantages of being a treaty-based jurisdiction, with a substantial network of treaties and double taxation avoidance agreements.

Mauritius companies which are resident in Mauritius for tax purposes are generally subject to tax on income at the flat rate of 15%. However, under Mauritius law, entities which hold a category 1 global business license (GBL 1) and which are regulated by the Financial Services Commission of Mauritius may claim a credit for foreign tax on income not derived from Mauritius against the Mauritius tax payable. If no written evidence is provided to the Mauritius Revenue Authority showing the amount of foreign tax charged, the amount of foreign tax paid is deemed to be equal to 80% of the Mauritius tax chargeable with respect to that income. Consequently, the effective tax rate will be between 3% and nil, depending on the circumstances. There is also no capital gains tax and no withholding tax on dividends and/ or interest paid to non-residents by Mauritius entities.

While the fiscal advantages offered by its series of tax treaties play a major role in the choice of Mauritius for cross-border investment, there are additional factors which should be taken into account. Mauritius is a well regulated business jurisdiction which has a proud record of adherence to international standards of best practices and offers a convenient time zone location which allows for the conduct of business in the Far East in the morning, Europe during the early afternoon and the United States, later in the day. Mauritius also enjoys a sophisticated international telecommunication service, an abundance of professional service providers at a relatively low cost, an educated and multilingual workforce, with English and French being the main business languages, as well as economic and political stability. Mauritius also has a hybrid legal system consisting of British common law practice and the French Napoleonic Code although the Privy Council in London is the final court of appeal, and forward-looking legislators have created modern and flexible company/commercial legislation which is essentially based on British common law.

Mauritius currently has tax treaties with 13 African countries (Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South Africa, Swaziland, Tunisia, Uganda and Zimbabwe) and has signed tax treaties with 3 others (Malawi, Nigeria and Zambia) which are

awaiting ratification. Additional treaties are currently being negotiated with Egypt, Burkina Faso, Algeria and Ghana (Source: Mauritius Revenue Authority).

Capital gains tax, where imposed in Africa, are generally levied at a rate in the range of 30% - 35%. However, all Mauritius tax treaties restrict taxing rights of capital gains to the country of residence of the seller of the assets. With Mauritius not taxing capital gains, there are significant potential tax savings available by using a Mauritius domiciled entity to structure an investment into Africa.

Almost all African nations impose withholding tax on dividend paid to non-residents, the rate of such imposition ranging generally between 10% - 20%. All Mauritius tax treaties limit the withholding tax on dividend. The treaty rates are generally 0%, 5% or 10%, thereby creating potential tax savings of 5% - 20% depending on the African country in question. The treaties guarantee a maximum effective withholding tax rate in the face of potential changes in fiscal policy in the investee countries.

Investment protection

Being an African nation, Mauritius has signed Investment Promotion and Protection Agreements (IPPAs) with 15 African countries, one of which (South Africa) is in force.¹ These IPPAs, inter alia, provide for free repatriation of investment capital and returns, guarantee against expropriation, provide for a most favoured nation rule with respect to treatment of investors, and compensation for losses in case of war, armed conflict or riot and further provide arrangements for the settlement of disputes between investors and the contracting states. Mauritius has deep African roots, a third of the population being of African origin. It is also worthwhile noting that Mauritius is a member of the major African regional organizations which provide preferential access to markets in the Africa region such as the African Union, Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the Indian Ocean Rim – Association for Regional Cooperation (IOR-ARC).

Its membership in these regional organizations, and being a signatory to all the major African conventions, can make Mauritius the best offshore financial service centre for establishing any fund or other vehicle for investment into Africa, especially having regard to treatment of the investments. On the other hand, while fully belonging to Africa, Mauritius is not a continental nation. This ideal geo-political situation eliminates spillover effects of any eventual neighboring conflicts.

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¹ Source: Ministry of Foreign Affairs – Mauritius