

MAURITIUS TWEAKS RULES FOR GLOBAL BIZ LICENSEES

Foreign Investors, Portfolio Offshore Funds Have To Prove They Are Not Shell Cos

Mauritius Prime Minister Pravind Jugnauth (who also holds the finance ministry portfolio) has proposed in his budget speech on June 8 to strengthen the 'substance' norms for entities operating under Category 1, Global Business Licence. These entities are referred to as GBC-1 companies.

Foreign portfolio investors (FPIs), offshore funds and other entities that invest in India via the Mauritius route will now have to satisfy any two of the secondary (or additional) substance conditions instead of just one to prove they have adequate commercial substance in Mauritius and are not just shell companies or post-box entities (see graphic). Mauritius-based entities engaged in investment activities typically opt for a

GBC-1 licence as this enables them to take advantage of tax treaties entered into by Mauritius. A major chunk of India's foreign direct investments (FDI) flow in from such companies. During 2016-17, Mauritius was the top source of FDI into India, with inflows of Rs 1, 05,587 crore (or 33% of total inflows). GBC-1 companies were always required to be 'controlled and managed' in Mauritius. For this, they were mandatorily required to have at least two Mauritius-resident directors who had relevant qualification and experience

and were actively involved in the control and management of the company, the principal bank account was to be in Mauritius, and accounts were required to be kept and audited in Mauritius.

Subsequently, the Financial Services Commission in Mauritius required GBC-1 companies to meet by January 1, 2015 any one of the additional substance conditions -an office in Mauritius, an administrative full-time employee, resolution of disputes arising out of the constitution of the company (akin to the Memorandum and Articles of Association under Indian law) via arbitration, holding of assets (other than cash and securities) of \$100,000, listing on a recognised stock exchange or having reasonable yearly expenditure. These companies, according to the budget proposal, will have to meet any two of these additional substance conditions.

However, tax experts are not unduly concerned with the requirement of meeting one more additional substance condition. "Enhancing the substance requirement should not impose much burden on the GBC-1 companies as many large investment-holding companies were anyway complying with at least two or three of these conditions. However, if Mauritius increases tax on GBC-1 companies, it may become less competitive than its peer jurisdictions like Singapore.

Currently, GBC-1 companies are taxed at 15% with a deemed foreign tax credit of 80%, which makes the effective tax

rate 3%," says Shefali Goradia, partner, BMR & Associates. Daksha Baxi, ED, Khaitan & Co, adds, "The increased substance test requirement will help the Mauritius-based investor who is claiming benefits under the India-Mauritius tax treaty. It would help during the transition period (April 1, 2017 up to March 31, 2019) to meet the limitation of benefit (LoB) clause in the amended tax treaty. Further, it would be useful to prove commercial substance and aid reasoning under India's general anti-avoidance rules (GAAR)."

Under the amended India-Mauritius treaty, during the transition period, capital gains arising from sale of Indian securities will be taxed at 50% of India's domestic tax rate. However, this concession would not be available to companies that were set up primarily for tax treaty abuse or to shell companies.

While referring to the challenges being faced by financial services industry from the international community, the OECD and the European Union, Mauritius PM Jugnauth said his country would gear up to face these challenges and ensure adherence to international requirements.

BLOCKING FLY-BY-NIGHT OPERATORS

MANDATORY 'SUBSTANCE' REQUIREMENTS

<p>1 Two Mauritius directors with relevant qualification, experience and active involvement in the co</p>	<p>2 A main bank account in Mauritius</p>	<p>3 Maintenance & audit of a/c books in Mauritius</p>
--	--	---

SECONDARY OR ADDITIONAL SUBSTANCE REQUIREMENTS*

<ul style="list-style-type: none"> > An office premises in Mauritius > Employment of at least one full-time administrative employee > Resolving disputes arising from constitution of the co (similar to Memorandum 	<ul style="list-style-type: none"> & Articles of Association under India's law) via arbitration > Holding of assets (not cash or securities) of at least \$100,000 > Listing of shares on a recognised stock exchange > Having reasonable annual expenditure
---	---

*Budget proposal calls for meeting any 2 of the 6 conditions, as opposed to any 1 required earlier

"We are also taking measures to further enhance the reputation of Mauritius as a jurisdiction of substance. Currently, a GBC-1 company must fulfill at least one of six criteria established by the Financial Services Commission (FSC) to demonstrate substance. They will henceforth be required to fulfill at least two of the criteria -thus making the guidelines more stringent on the substance requirement," he stated "We will also reform our tax regime for global business companies so that it evolves and meets the new international requirements," he added in his speech.

India appreciated in speech
Referring to the \$500-million financial support from India in his budget, Mauritius PM Jugnauth said, "Let me highlight that this year again we are getting an exceptional financial support from the GoI (government of India) to implement several key development projects and programmes." The line of credit of \$500 million, bearing an annual interest rate of 1.8%, will be made available to the SBM (Mauritius) Infrastructure Development Company for investment in redeemable preference shares.

Jun 17 2017
Times of India

PAYING RS 50K RENT? BETTER CUT 5% TDS

Finance Act, 2017 Brings New Rule From Jun 1

From June 1, individuals who pay a rent of over Rs 50,000 per month are required to deduct tax at source at 5%. The relevant section in the Income Tax (I-T) Act -section 194-IB -was introduced by the Finance Act, 2017 and it widened the scope of withholding tax by making individuals also responsible for tax deduction at source (TDS) on rental payments exceeding the specified sum. Rents in metros are sky high and it's likely that many tenants will have to meet with the obligations of withholding tax, depositing it with the government and also filing the relevant documentation. The silver lining is that compliance formalities have been made easier for individuals who are tenants. The Central Board of Direct Taxes (CBDT) issued on June 8 a notification relating to some compliance requirements. **The dos and the don'ts** are explained below. Do not revise your rent agreement. Let's use an illustrative case study: Sharon has been staying as a tenant in a 2BHK flat in the upscale area of Bandstand, Bandra, for the

past eight months. Out of the blue, her landlady asked her whether she wanted to revise the three-year lease agreement and split up the monthly rental of Rs 85,000 into Rs 40,000 as rent and the balance of Rs 45,000 as furniture hire. Sharon learnt that some other tenants in the same vicinity were asking for such a split to avoid their TDS obligations. "Revising an agreement mid-way is bound to catch the wrong attention of the tax authorities and should

not be undertaken. Only if an individual is entering into a new agreement and is actually paying for furniture hire could the drawing up of two separate agreements be considered. Besides, the charges for furniture hire need to be realistic," cautions Amarpal S Chadha, partner (people advisory services) at EY India. Ameet Patel, tax partner at CA firm Manohar Chowdhry & Associates, says, "There have been instances where people trying to wriggle out of their TDS responsibilities resort to various devices,

such as splitting up of the rent agreement. This is clearly done with a view to violate the law and I would never advise anyone to take such a step." Chadha adds, "Non-deduction of tax results in a levy of interest at 1% per month, it is 1.5% per month for non-payment after deduction. Further, non-filing of required statement would attract penal fee of Rs 200 per

deducted at the time of payment," says Chadha. As the rent paid by Sharon is Rs 85,000 per month for the period June 1, 2017 up to March 31, 2018 (which is the last month in the financial year 2017-18), the total rent works out to Rs 8.50 lakh. The TDS at 5% is Rs 42,500. Sharon will have to deduct this amount from her March rental payment and pay the balance of Rs 42,500 to her landlady. If the landlady doesn't have a PAN, this means a higher tax of 20% is to be withheld. However, in such cases, the deduction is not to exceed the amount of rent payable for the last month. The tax deducted is required to be paid within 30 days from the end of the month in which the deduction was made. It can be remitted electronically to the RBI or SBI or any authorised bank and form 26QC (which serves as a challan-cum-TDS) is to be filed electronically through the NSDL portal. The same web portal also provides form 16C, which needs to be downloaded and issued to the landlady. For full report, log on to <http://www.timesofindia.com>

Jun 15 2017
Times of India

THE DOS AND DON'TS

Don't revise your rent agreement to escape TDS obligations — it could land you in further trouble, including having to pay penal interest for non-deduction

Do withhold tax at source in the last month of the financial year (ie, for March 2018 in the case of FY2017-18). Or if you are vacating your rented flat before March, then in the last month of occupancy



day for the period of delay. " **Comply with TDS norms** Tenants who are individuals and have to meet TDS obligations are absolved from obtaining a Tax Deduction Account Number (TAN). Further, the tax is not to be deducted each month, but merely once a year. "The tax is required to be deducted at the time of credit or payment (whichever is earlier) of the rent, in the last month of the financial year, or the last month of tenancy if the flat is to be vacated during the year. Since individuals would not be maintaining books of accounts, the tax would typically be

END OF ERA? - YAHOO SIGNS OFF, COMPLETES \$4.5-BILLION SALE TO VERIZON

Yahoo, one of the founding companies of the internet era, is no more. Verizon Communications completed its purchase on Tuesday of Yahoo's internet business for \$4.48 billion. Yahoo will be combined with AOL, another faded web pioneer, into a new division of Verizon called Oath, under the leadership of AOL's chief executive, Tim Armstrong. Oath has about 1.3 billion users who visit at least once a month, and Verizon hopes to use its range of content and create new forms of advertising to attract more viewers and marketers to

the platform. The company also intends to cut costs, with plans to lay off about 2,100 people, or about 15 percent of Oath's staff. "Now that the deal is closed, we are excited to set our focus on being the best company for consumer media, and the best partner to our advertising,

content and publisher partners," Armstrong said. Yahoo's chief executive Marissa Mayer will not join Oath.

Jun 14 2017
The Times of India

SEBI CHIEF, BROKERS LOOK AT EXPANDING INVESTOR BASE

Gives More Time
To Meet Risk-
Control Norms

Sebi chairman Ajay Tyagi, along with some of the top officials at the markets regulatory body, met on Friday representatives from the broking community to discuss ways and means to attract more retail investors to invest in equities. The regulator also gave brokers another six-eight months to meet the regulatory requirement related to the recently launched 'Enhanced Risk-Based Supervision'

standards, sources said. Sebi officials said the regulatory body was also concerned with the low level of participation of individual investors in the market and is working to increase this number. According to a recent Sebi survey, there were about 3.4 crore households in India which invested in the market.

Various other estimates put the number between 2% and 3% of the total population of India who invest in the market. In comparison, the corresponding number in some of the developed markets

are in high double digits. One of the suggestions given by the brokers' representatives was to lower the minimum amount that an investor can invest in a portfolio management services (PMS). At present, this is fixed at Rs 25 lakh per investor. "If this level could be lowered, more investors will be able to access the market through the PMS model," said one of the sources who attended the meeting. From the brokers' side, members of Association of National Exchanges Members of India (ANMI) and BSE Brokers Forum attended the meeting. As for the 'Enhanced Risk Based Supervision', new measures

include risk-mitigating standards that require brokers to segregate and tag properly bank and demat accounts of clients and their own (proprietary), proper monitoring of clients' money and reporting these to the exchanges, changing the internal audit processes, etc. Since a large number of brokers, especially the smaller ones, are finding it difficult to comply with the new standards, brokers had requested Sebi to extend the deadline which was to kick in on July 1.

Jun 17 2017
Times of India

FLAT PRICES IN POST-JULY PROJECTS MAY DIP

CURRENT LEVIES

On raw material

Excise: 12.5% on construction material, cement faces higher levy

VAT: 12.5-14.5% on construction material

Entry tax: Levies in several states



On construction

Service tax: 4.5% on construction of flats

VAT: 1-2% under composition scheme

Since no input tax credit is available, there is cascading effect of the levies

If you are paying for your house in installments to the builder, you may end up paying 12% GST on payments due from July 1, instead of the 4.5% service tax that you paid on installments till June 30.

Similarly, if you buy a house after July 1 in a project that is complete or nearing completion, you will have to pay tax at the rate of 12% on the entire amount. Builders claim the 7.5% hike (12%-4.5%) in tax post-GST is because they will not be able to claim any credit for taxes paid on inputs bought before July 1. For projects nearing completion or are ready, most

buyers would have paid 90-95% of the price, whether they are on a construction-linked or a down payment plan. In such cases, the burden of higher tax will only be on the remaining 5-10% of the amount.

After July 1, any invoice issued by the builder will attract 12% GST. Many developers have told buyers to be ready to pay higher taxes on the remaining sum. Suppose a person has bought a flat for Rs 1 crore earlier this year and has paid Rs 20 lakh so far with 4.5% service tax, on the remaining Rs 80 lakh, 12% GST will have to be paid as the construction progresses. The tax liability will jump from Rs 3.6 lakh (4.5% of Rs 80 lakh under pre-GST) to Rs 9.6 lakh (12%). The question

is why can't builders of ongoing projects pass on the input tax credit on purchases made after July 1 to buyers in installments that will be paid after GST comes into effect? The only way to pass on such a benefit is to reduce the price of the flat through a process of price renegotiation which is complex and unlikely. Suresh N Rohira, partner, Grant Thornton, said the government and developers should find a way to ensure that the pass through of benefit happens. But no mechanism has been worked out as yet.

Getamber Anand, chairman of real estate industry body Credai, said developers were looking to develop a mechanism to pass on the benefits of input tax credit. "We are ready to share the benefits with the buyers of ongoing projects."

Good news is in store for those hoping to buy house in projects that will be launched after the

GST is rolled out. On such sales, buyers will have the option to negotiate prices after factoring in the credit available to the developer for taxes paid on inputs such as cement, steel, and various services. As a result, prices are likely to fall by up to 5%, especially at the lower-end of the market. Gains may not be so significant in the premium segment.

THE NEW EQUATION

- > Assumed flat price | ₹1 crore
- > Down-payment | ₹20 lakh
- > Service tax paid @4.5% | ₹90,000
- > Construction-linked payment for remaining ₹80 lakh
- > Service tax @4.5% | ₹3.6 lakh
- > If payment schedule for remaining amount falls after July 1
- > GST @12% | ₹9.6 lakh (without input tax credit)

Jun 17 2017
Times of India

GST: REGULATORS TO ENSURE NO NEW TAX BURDEN ON FLAT BUYERS

Revenue Secretary Sends Advisory To Housing Ministry.

The revenue department is asking real estate regulators in states as well as builders to ensure that developers do not raise the tax burden on under-construction buildings, citing the introduction of GST. Several developers have sent mails to home buyers asking them to pay 4.5% service tax by June 30 to avoid shelling out 12% GST from July. Prompted by this, the Central Board of Excise and Customs issued a statement insisting that the overall incidence will remain unchanged as input tax credit will accrue to builders. In addition, revenue secretary Hasmukh Adhia has written to his counterpart in the housing ministry, Nandita Chatterjee, asking the ministry to advise the state regulators, developers and other stakeholders on the need to ensure that buyers are not asked to cough up more. "It

is a fairly strong alert to builders," said an officer.

In addition, the government has also threatened to invoke the anti-profiteering clause for unjustified increase in prices or for failure to pass on the benefits to consumers. At the same time, officers acknowledged that when it comes to projects that are nearing completion or are ready for possession, buyers should try to clear all the payments by June so that they do not end up paying higher levy given that input credit will not be available to the developer since almost all the raw material would have been bought before GST kicks in. "In such cases, it will be the last instalment, which will be 5- 10% of the cost of the apartment. If people pay by the month-end, they will not be subjected to a higher levy," said a source.

In a statement on Thursday, the finance ministry said construction of flats and buildings will see a decrease in tax incidence once GST rolls out. Most construction material attract 12.5% central excise, with cement facing a higher levy. In addition, 12.5-14.5% VAT is levied by the states apart from other levies such as entry tax. "Input tax credit of the above taxes is not currently allowed for payment of service tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.," the ministry said.

Once GST kicks in, although the headline rate is 12%, credit will be given for taxes paid on inputs at every stage, resulting in lower cost. "Builders are expected to pass on the benefits of lower tax burden under the GST regime to buyers of property by way of

reduced prices installments. It is, therefore, advised to all builders' construction companies that in flats under construction, they should not ask customers to pay higher tax rate on installments to be received after imposition of GST," the ministry said.

Jun 17 2017
Times of India

DELOITTE REPORT -

'NSE STAFF GAVE CONFLICTING STATEMENT'

Within weeks of markets regulator Sebi sending show-cause notices to the National Stock Exchange (NSE) and some of its current and former employees for preferential treatment to brokers in disseminating trading data between December 2012 and May 2014, a whistleblower has published a highly confidential investigation report online. The report, by consultancy major Deloitte Touche Tomhatsu, pointed out that while one broker, OPG Securities,

was definitely given preferential treatment by NSE employees, it did not comment if the bourse employees had colluded while doing the same. Deloitte report also said that NSE did not have documented policies for the system that it had audited, and surprisingly the exchange's team that provided the consultancy major with all the relevant data and servers, were 'unaware' of additional

servers which were also used during the period for which system audit was done. Some NSE employees also gave conflicting statement. An NSE official said that since the matter was between Sebi and the exchange, it would not be able to comment on the Deloitte report. Deloitte was appointed by NSE under regulatory pressure to look into the allegations of preferential treatment to some select brokers. The report noted that three brokers -OPG Securities,

Universal Stock Brokers and NYCE Securities & Derivatives -were found to have been the first to connect to NSE's servers more frequently than others. At that time, because the system's architecture was such that brokers who connected to NSE's servers first, had access to the trading data ahead of others. The Deloitte report said that NSE's server was prone to manipulation.

Jun 17 2017
Times of India