

Yandraduth Googoolye: Foreign Account Tax Compliance Act – developments in Mauritius

Keynote address by Mr Yandraduth Googoolye, First Deputy Governor of the Bank of Mauritius, at the launch of the Foreign Account Tax Compliance Act Survey by KPMG, Ebène, 5 September 2012.

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Distinguished guests, a very good morning to you all. It is a great honour to be here today to address you on the launch of the KPMG Mauritius FATCA Survey.

A few months ago, the Governor had addressed a similar audience on the Foreign Account Tax Compliance Act¹ (FATCA). Today, I would like to highlight some of the main developments about the FATCA for us to assess the depth and magnitude of this emerging regulatory issue. Although the FATCA was enacted in 2010, surprisingly, there are still a few countries which are blissfully unaware that such a law as the FATCA even exists and which are far from realizing the impact that this law will have on them. Seeing the number gathered here today, I am happy to note that Mauritius is not one of those countries and I commend KPMG for organizing such forums where we can all come together and take stock of where we are heading in this area.

For a long time, there were those who were happy to brush aside the FATCA. Why would foreigners agree to act as Inland Revenue Service (IRS) agents? Surely, the US would soon realise that those who hailed the FACTA as “an atomic bomb to kill a fly” were right. They would wake up to reality, repeal this “breath-takingly arrogant law” (i.e. FATCA), and all would be well again.

There were also those – the smaller countries – who were happy to sit back and think that the “big guys” would take care of the FATCA. Enough pressure would be exerted on the US and they would back-peddle on their US-centric law.

Not many would have predicted the turn of events that followed. UK, France, Italy, Spain and Germany have seen in the FATCA a new opportunity. They have agreed to the FATCA-principle and are entering into agreements with the US to not only implement the FATCA but to improve offshore tax compliance. The communiqué issued jointly by the US and the 5 European countries – the “FATCA Partners” as they are called – is revealing and I quote: “For many years France, Germany, Italy, Spain, UK and US, have been partners in countering offshore tax evasion and improving international tax compliance so that all citizens pay their fair share of taxes due under the law.”

On 26 July 2012, the US Treasury released a model intergovernmental agreement for implementing the FATCA. Two versions of the model agreement – a reciprocal version and a non-reciprocal version – were issued. Both versions establish a framework for reporting by financial institutions of certain financial account information to their respective tax authorities, followed by automatic exchange of such information under existing bilateral tax treaties or tax information exchange agreements. Both versions of the model agreement also address the legal issues that had been raised in connection with the FATCA, and simplify its implementation for financial institutions.

¹ The Foreign Account Tax Compliance Act (FATCA) was enacted, by the United States, on 18 March 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act in an effort by the United States to combat tax evasion by U.S. persons holding investments in offshore accounts. FATCA will require foreign financial institutions (FFIs), among others, to enter into a special agreement with the IRS by 30 June 2013 and report directly to the US Government certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The FFIs would otherwise be subject to withholding on certain types of payments relating to U.S. investments.

The reciprocal version of the model also provides for the U.S. to exchange information currently collected on accounts held in U.S. financial institutions by residents of partner countries, and includes a policy commitment to pursue regulations and support legislation that would provide for equivalent levels of exchange by the U.S.

The OECD has welcomed the conclusion of negotiations between the U.S. and the 5 European countries. The Secretary General of the OECD has in fact expressed the intent of the OECD to work closely with interested countries and stakeholders to design global solutions to global problems for the benefit of governments and businesses around the world.

Where does this leave Mauritius? I believe that we also ought to be seeking to enter into Intergovernmental Agreements of the model types proposed by the U.S.

We are on the OECD “White List” as a jurisdiction with acceptable tax standards in compliance with OECD norms and best-practice principles and adhere to international standards on transparency and exchange of information set by the OECD. We are also recognised by the World Bank, the IMF and the FATF as a clean and transparent jurisdiction with a sound legal, regulatory and supervisory framework.

Information exchange in tax matters, indeed, ranks high on our agenda. With 36 Double Taxation Avoidance Agreements (DTAA) in force, nine others awaiting ratification and 12 DTAAs under negotiation as well as half a dozen Tax Information Exchange Agreements (TIEA) in place and others in the pipeline, Mauritius has demonstrated that it is committed to the concepts of transparency and effective exchange of information. In fact, to further improve the effectiveness of our exchange of information mechanism and allow us to provide assistance to our partners in the collection of foreign taxes, Mauritius proposes to become a party to the Convention on Mutual Administrative Assistance in Tax Matters which has been jointly developed by the OECD and the Council of Europe. Mauritius is definitely a jurisdiction of substance and has in place the necessary mechanisms for effective exchange of information in tax matters.

Importantly, as at present, however, we do not have in place any income tax treaty or Tax Information Exchange Agreement with the US, – a prerequisite to enter into Intergovernmental Agreements of the model types proposed by the US. Mauritius has never refused to sign an exchange of information agreement. We should, therefore, endeavour to pursue negotiations in this area with the US. However, even if an agreement were to be entered, when would it be reached? Would this leave us with sufficient time to meet the looming FATCA–deadline? Or would the OECD succeed in negotiating a third type of model agreement with the U.S. for those countries that do not have in place such treaties or agreements?

Such questions touch upon issues well beyond the remit of the Bank. It is for this reason that at the level of the Bank, we have urged Government to consider setting up a collaborative platform comprising relevant stakeholders to reflect on the implications of the FATCA in Mauritius and take a concerted view regarding its implementation. I am very pleased that the collaborative platform has been constituted. A Joint Working Group comprising representatives of the Mauritius Bankers’ Association (MBA) and the Bank has also been set up to evaluate the impact of FATCA on banks in Mauritius and I am very appreciative of the contribution from the MBA in this endeavour. Rest assured that the authorities are taking this matter seriously.

What is certain at this stage is that we will have to comply with the FATCA. In some way or another. Yes, there are costs. Yes, it is cumbersome. And yes, the challenges are numerous. Yet, we have no choice but to comply.

FATCA is here to stay. It would be a bad idea to ignore it. And an even worse idea not to comply with it. Instead of looking at the FATCA as the insurmountable monster, we should be considering how to use it to our advantage – just as the FATCA Partners have done. With these Intergovernmental Agreements, these jurisdictions can hope to gather information on

their own citizens and claim taxes back. They have been far sighted and have turned the FATCA threat into an opportunity. We should do the same. Let us seize this opportunity before it is too late.

The first step would be to see how best to comply with the FATCA. The sooner this is achieved, the better it would be for us. We could then start selling our jurisdiction as a FATCA-compliant one. Our FATCA-compliant status should be used to attract investors to our jurisdiction. The so-called murder weapon (i.e. the FATCA) should be used to entice those who have clean money and are not running away from paying their fair share of taxes, to invest in Mauritius. Financial intermediation which has over the years consolidated its position as an emerging sector of the economy now contributes nearly 10 per cent to the GDP. We should capitalise on the fact that Mauritius offers the best doing business environment in Africa. While the World Bank's 2012 Doing Business Report ranks Mauritius 23rd globally out of 183 economies, we rank 13th in terms of "protecting Investors" and 11th in terms of "Paying Taxes". According to the Global Competitiveness Report 2012–13, Mauritius ranks 13th in terms of "strength of investor protection". Opportunities to boost the financial intermediation sector's potential, therefore, cannot be ignored. As I have said repeatedly, Mauritius is not a tax haven and the FATCA provides us with yet another opportunity to show this to the world.

FATCA forces us to think differently – just as the threat of the Indian General Anti-Avoidance Rules (GAAR) does. The current economic climate has demonstrated more than ever that we need to be ready to meet the challenges that are thrown our way. We cannot keep doing things the way we used to. We need to change and adapt. We need to find new avenues, to innovate. While the financial intermediation sector grows on average by 5 per cent annually, we seem to have stagnated in terms of new products. The Global Competitiveness Report 2012–13 ranks Mauritius 47th in terms of "availability of financial services". We lag well behind in terms of "capacity to innovate", be it in our global rank or regional rank. Such metrics confirm that we need to broaden the spectrum of our financial services.

I hope that this seminar will address many of the queries that we have on the FATCA and its compliance.

I once again commend the organisers for providing the relevant stakeholders with a platform where views can be exchanged and I hope that more ideas emerge on how we can give a positive spin to the FATCA. One final advice, if I may: Turn Challenges into Opportunities! Think differently!

Thank you for your kind attention.