

# Mauritius:

## An Investment Gateway to Africa

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With its strategic geographic location between Asia and Africa and its stable regulatory environment, Mauritius looks set to strengthen its position as an investment gateway to Africa. This article discusses the factors that contribute to the success of Mauritius as a preferred investment jurisdiction, and highlights some of the structuring possibilities available for corporations looking to invest in Africa.

An island of 720 square miles with a population of 1.3 million, Mauritius sits next to the world's second largest and second most populous continent. Although Africa has huge amounts of arable land and a significant amount of resources, it remains widely underdeveloped and poor. Still, the potential for growth is omnipresent, with some African countries making great progress and registering year-on-year growth even as developed countries face low growth, stagnation or even contraction in their economies.

The vibrancy of Mauritius' economy is acknowledged by world leaders such as Hillary Clinton and Tony Blair. With its strategic geographic location between Asia and Africa and its stable regulatory environment, Mauritius looks set to strengthen its position as an investment gateway to Africa.

### Advantage Mauritius

The factors that have contributed to the success of Mauritius as a preferred investment jurisdiction are:

- A business-friendly environment with a simple tax system that attracts investors (see Figure 1 on the following page for some international benchmarks);
- Modern legislative and regulatory frameworks that are transparent and flexible, yet require accountability;
- Ultimate Court of Appeal by judicial review of the Law Lords of the Privy Council of the United Kingdom;
- High literacy, producing a capable and skilled workforce including qualified accountants and lawyers;
- An open immigration policy that facilitates the relocation of foreign talent in instances where skills required are not available;
- A well-developed network of internal and external

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communications infrastructure, including an extensive system of well-maintained roads, modern and efficient ports, extension of the airport with new terminals, high-band fibre connectivity, mobile telephone networks and express courier service;

- Presence of all the major international banks, with a diversified set of offerings – from plain vanilla banking products to complex financial instruments;
- Being white-listed by the Organization for Economic Cooperation and Development (OECD) and having volunteered for phases 1 and 2 of the peer review;
- Fast expanding double taxation avoidance agreements (DTAAs), currently with 37 countries of which 14 are with African countries, and more in the process of being negotiated or signed. A comprehensive network of Investment Promotion and Protection Agreements

(IPPA) for protection against expropriation and nationalisation;

- Being a member of the Multilateral Investment Guarantee Agency, a World Bank affiliate;
- A strong legal infrastructure and the presence of international law firms, with Mauritius positioning itself as the arbitration centre for Africa; and
- The possibility of dual listing of companies on the Stock Exchange of Mauritius (SEM). The SEM is a member of the World Federation of Exchanges and has also been designated as a recognised stock exchange by the UK.

#### Business Organisation Structures

Companies incorporated in Mauritius are set up under the aegis of the Companies Act 2001. Companies that conduct their activities predominantly outside Mauritius can apply for a global business licence as issued by the Financial

Services Commission (FSC), the regulator for the non-banking financial institutions, which is governed by the Financial Services Act 2007. There are two types of licences that are issued:

- Category 1 Global Business Licences (GBL1), which are tax treaty based vehicles.
- Category 2 Global Business Licences (GBL2), which are non-resident for tax treaty purposes and are considered as tax-exempt bodies.

A collective investment scheme (CIS) can also be set up. The common definition of a CIS is that it is a professionally managed pooling of funds with the aim of spreading risk. As there is pooling of funds, and the participants do not have control over the day-to-day management, this activity is regulated by the FSC. Such structures must comply with the Securities Act 2005 as amended and with the provisions of Securities (Collective Investment Schemes

Figure 1: International Recognitions Obtained by Mauritius		
Index	Global rank	Rank in Africa
World Bank Ease of Doing Business Index 2013	19th out of 185 countries	1st
2012 Heritage Foundation Index of Economic Freedom	8th out of 183 countries	1st
Forbes Survey of Best Countries for Business 2011	19th out of 134 countries	1st
Democracy Index 2010	Full democracy 24th out of 167	1st
Knowledge Economy Index	64	1st
Mo Ibrahim Index on African Governance 2012	N/A	1st
Global Competitiveness Index 2011-2012	54th out of 142 countries	2nd

Source: Board of Investment Mauritius

and Closed-end Funds) Regulations 2008.

Other business organisations include: sociétés, which are a type of partnership and commonly used in the civil code countries; trusts, which are governed by the Trust Act 2001; limited liability partnerships, under the Limited Liability Partnership Act 2011; and foundations, under the Foundations Act 2012. A foundation provides more control over the assets that have been settled in it, since it has a board that can include the settlors as well as the beneficiaries, as compared to a trust, where legal ownership is handed over to the trustees.

### The Tax System

Mauritius has a simple tax regime. All residents are taxed on their worldwide income on an accrual basis. A company is deemed resident if it is incorporated in Mauritius or if central management and control is located there. The latter provides for such companies that are incorporated outside Mauritius but with the strategic decisions being carried out in Mauritius or the board of directors meeting there.

Non-resident companies are taxed on income that is sourced from Mauritius. In case of a trust, an annual declaration of non-residence can be made by the trustees such that the income of the trust is exempt, although certain conditions must be

satisfied. As far as limited liability partnerships and sociétés are concerned, they are usually treated as transparent vehicles. However, if these vehicles hold a GBL1 licence, they can be treated as opaque, such that the vehicles themselves are taxed rather than the partners. This flexibility in allowing either to be treated as opaque or transparent provides for good planning opportunities.

The income tax rate is 15%. However, if the vehicle derives foreign income that has been subject to tax, the amount of foreign tax paid may be offset against the income tax payable. In case income consists of dividend income, the credit for foreign tax will include tax imposed on the profits out of which the dividend is directly or indirectly paid (underlying tax). Under the Income Tax (Foreign Tax Credit) Regulations, underlying tax may be claimed, provided the Mauritius vehicle holds at least 5%, directly or indirectly, in the underlying company.

This tax credit mechanism increases the likelihood that structures that have suffered tax at source, be it withholding or underlying, can end up tax-neutral. In the event the structures have not suffered tax at source, but the business holds a GBL1, a unilateral tax credit of 80% of the Mauritius tax charge is available, thus potentially resulting in a maximum effective tax rate of 3%.

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The other tax advantage a Mauritius structure can avail itself of unilaterally is tax sparing. This allows for credit to be taken if no tax has been paid due to a concessionary regime established in the foreign country with a view to promoting industrial, commercial, scientific or other development in that country. The effect of claiming the tax sparing is that the tax benefit awarded by the foreign country is not diluted.

From a technical standpoint, the chargeable income may be computed on a source-by-source basis or can be pooled together. Depending on the circumstances, better utilisation of the foreign tax credit can be made by income pooling, so that any unused tax credit may be offset against sources that do not have any tax credit.

Mauritius does not impose any capital gains tax. Thus, gains

are not taxed in case of the disposal of an investment. If the company engages in trading of securities, the profit derived on such activity is exempt from income tax.

There are no thin capitalisation rules, so the Mauritius vehicle may be financed by any amount of debt. Also, there is no withholding tax on interest paid to non-residents by a GBL1 company.

There are no transfer pricing rules. However, there is a general provision of 'arm's length' for transactions between related parties. Care should be taken when structuring a transaction between related parties.

Withholding tax is applicable as outlined in Figure 2.

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Having set the scene on the tax and regulatory framework, an essential ingredient beyond

the commercial rationale is the tax arbitrage a company can benefit from. Mauritius has a fast expanding tax treaty network with both developed and developing nations. Most of the treaties negotiated are based on the OECD model with some variations to make it beneficial for residents of Mauritius.

An example of one such clause is the most favoured nation's clause, which provides that if the other contracting states negotiate a treaty with another country that has more beneficial terms than the Mauritius treaty, then the latter is deemed to include the Mauritius treaty at par with the beneficial treaty.

In its quest to become the gateway to Africa, Mauritius has concluded several treaties that are hugely beneficial, and several others are in progress. The Mauritius Minister of Finance has announced his objective to sign five additional treaties this year in his budget speech. The major advantages of the treaties are:

#### Capital Gains Tax Minimisation

An increasing number of African states are starting to impose capital gains tax. Mozambique, for example, has just introduced a capital gains tax of 32%. However, the DTAA's in force in Mauritius restrict taxing rights of capital gains to the country of the seller of the assets. Since there is no

**Figure 2: Withholding Tax Applicable**

Dividend	Not applicable, as dividend is not taxed in the hands of the recipients whether residents or non-residents
Interest payable to non-residents	10%*
Royalty payable to: <ul style="list-style-type: none"> <li>• Residents</li> <li>• Non-residents</li> </ul>	10% 15%*
Rent	5%
Payment to contractors and subcontractors	0.75%
Payment to non-residents for services rendered in Mauritius	10%

\* Not applicable to GBL1

Source: Taxand

capital gains tax in Mauritius, the potential tax savings for a Mauritius registered company are significant.

There is also no limitation of benefits clause under the treaties Mauritius has signed with African states.

### Minimising Dividend Withholding Tax

The majority of African states impose some withholding tax

on dividends paid out to non-residents. These vary between 10% and 20%. The DTAs in force in Mauritius limit withholding taxes on dividend. The treaty rates are generally 0%, 5% or 10%, thereby creating potential tax savings depending on the investee country. Figure 3 provides a summary of the withholding tax rates under treaties Mauritius has signed with African countries.

**Figure 3: Withholding Tax Rates under Mauritius-Africa DTAs**

Target countries	Dividends		Interest		Royalties		Capital gains	
	Withholding tax rates in target country on dividends paid		Withholding tax rates in target country on interest paid		Withholding tax rates in target country on royalties paid		Taxation of gains on disposal of shares in SPVs	
	Non-treaty rates (%)	Treaty with Mauritius (%)	Non-treaty rates (%)	Treaty with Mauritius (%)	Non-treaty rates (%)	Treaty with Mauritius (%)	Non-treaty rates (%)	Treaty with Mauritius (%)
Botswana	7.5	5/10	15	12	15	12.5	R	22
Kenya*	10	5/10	15/25	10	20	10	R	30
Lesotho	25	10	25	10	25	20	R**	25
Madagascar	N/A	5/10	23	10	10	5	R	21
Mozambique	20	8/10	20	8	20	5	R	32
Namibia	10/20	8/10	20	8	20	5	R	nil
Nigeria*	10	7.5	10	7.5	10	7.5	R	10
Senegal	10	0	8/16/20	0	20	0	R	25
Seychelles	15	0	15	0	0/15	0	R	nil
South Africa	0	5/10	0	0	12	0	R	14
Swaziland	12.5/15	7.5	10	5	15	7.5	R	nil
Tunisia	0	0	5	2.5	15	2.5	R	30
Uganda	15	10	15	10	15	10	R	30
Zambia	15	5/15	15	10	15	R	-	nil
Zimbabwe	10/15	10/20	15	10	15	15	R***	5/15

\*Treaty awaiting ratification

\*\*In case the special purpose vehicles (SPVs) hold immovable property, gains will be taxable in source state

\*\*\*R – taxed only in resident state

Source: Taxand

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Based on the beneficial withholding tax rate that the treaties provide as well as the flexible Income Tax Act provisions, various structuring possibilities are available, such as an investment holding platform or regional treasury, or a structure holding intellectual property or rights.

### Investment Promotion and Protection Agreements

As an African nation, Mauritius has signed Investment Promotion and Protection Agreements (IPPAs) with 15 African member states. The IPPA typically offers the following guarantees to investors from contracting states:

- Free repatriation of investment capital and returns;
- Guarantee against expropriation;
- Most favoured nation rule with respect to the treatment of investment, compensation for losses in case of war, armed conflict, riots, etc.; and
- Arrangement for settlement of disputes between investors and the contracting states.

Based on the beneficial withholding tax rate that the treaties provide as well as the flexible Income Tax Act provisions, various structuring possibilities are available, such as an investment holding platform or regional treasury, or a structure holding intellectual property or rights.

The Finance Act 2012 has amended the Financial Services Act 2007 to add two activities to the Mauritius offering – global headquarters administration and global treasury activities. Schedule 2 part II and part III sets out that that at least three services must be performed for three related entities, be it in the treasury or administrative field. Even if the activities are provided to global business

companies, these are deemed to be a foreign source and get the benefit of the foreign tax credit mechanism.

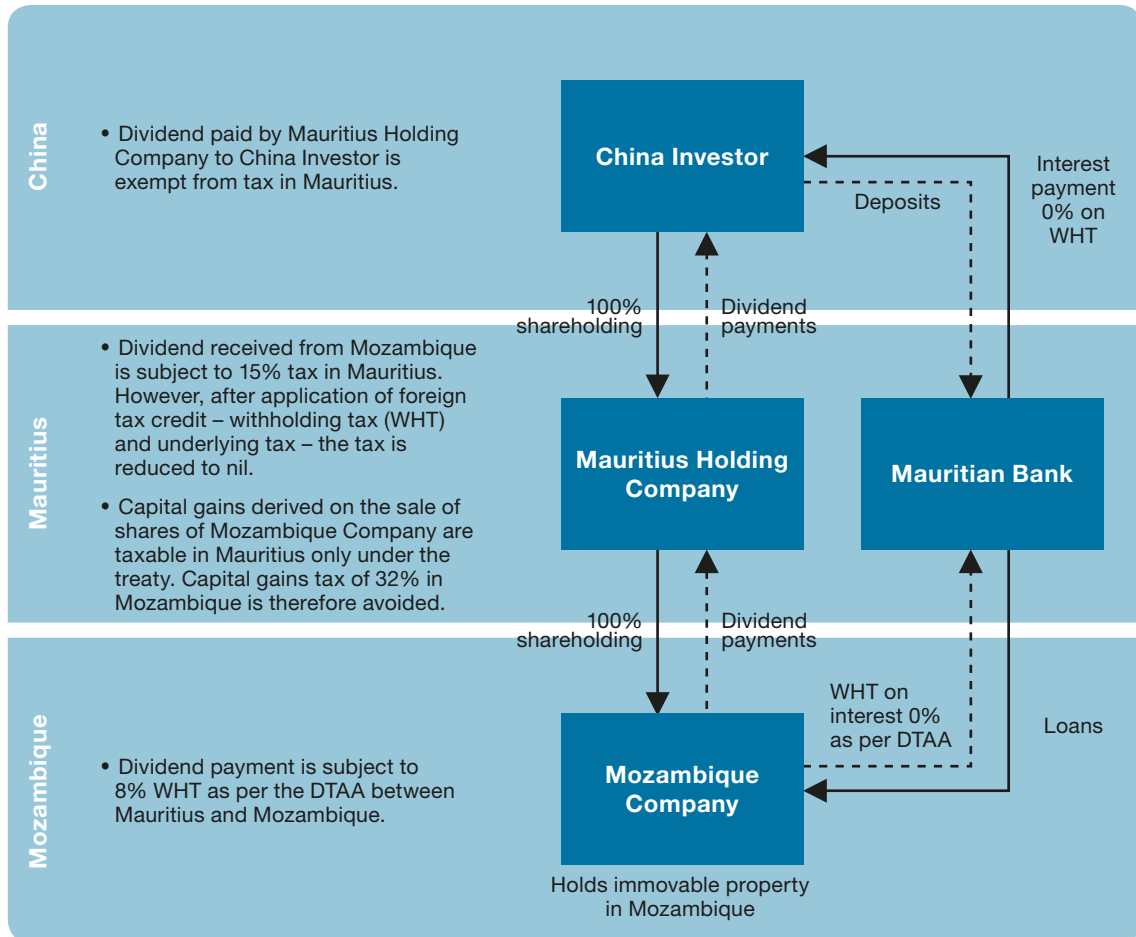
Figure 4 depicts a typical holding structure that can be set up in Mauritius. We have taken an example of a Chinese Investor wishing to invest in the emerging coal and gas sector in Mozambique. The financing of the Mozambique Company can be done either through debt or equity.

**i) The Chinese Investor can invest in equity in the Mauritius Holding Company, which in turn invests in the Mozambique Company.**

The advantages of this structure are:

- As per the tax treaty between Mauritius and Mozambique, dividend paid to the Mauritius Holding Company will be subject to a reduced withholding tax rate of 8% in Mozambique.
- With the application of the foreign tax credit mechanism, the effective tax for the Mauritius Holding Company will be reduced to nil.
- Mauritius has the exclusive right to tax any gains derived by the Mauritius Holding Company on the sale of shares held in the Mozambique Company.
- As opposed to other tax treaties signed by Mozambique, Mauritius has exclusive rights to tax capital gains on the sale of shares held in the Mozambique Company even if the assets of the Mozambique Company

**Figure 4: Typical Holding Structure for a Chinese Investor Wishing to Invest in Mozambique's Coal and Gas Sector**



Source: Taxand

- consist principally of immovable property.
- As there is no capital gains tax in Mauritius, gains are not taxed at all.
- Dividends paid by the Mauritius Company to the Chinese Investor will be exempt from tax in Mauritius.
- An advance pricing agreement can be obtained from the Mauritius Revenue Authority under Article 25 of the treaty

between Mauritius and Mozambique.

**ii) The Chinese Investor can also finance the Mozambique Company partly through a back-to-back loan.**

- The Chinese Company deposits money in a Mauritian Bank.
- The Mauritian bank provide a loan to the Mozambique Company.

- Under the treaty, interest paid by the Mozambique Company to the Mauritian Bank is free of any withholding tax.
- Alternatively, the same result can be achieved if the Chinese Investor invests the money as equity in the Mauritian Company, which then deposits the money in the Mauritian Bank.
- Interest derived by the Mauritius Company from

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the Mauritian Bank will be exempt from tax in Mauritius.

- However, Mozambique does have thin capitalisation rules which provide that loans from related foreign corporations must not exceed twice the corresponding equity in the borrowing Mozambican corporation.
- Although the loan is from the Mauritian Bank, which is a non-related party, it is advisable to keep a debt to equity ratio of 2:1.

While we have taken the example of an investor from a country that does not have a tax treaty with Mozambique, the structure can also be used by investors from treaty countries like India and South Africa, as the advantages

provided by the Mauritius-Mozambique tax treaty are not available under the South Africa-Mozambique or India-Mozambique tax treaty.

Caution must be taken in light of greater convergence toward the adoption of anti-avoidance rules by developed and emerging nations. It is strongly advised that adequate substance and commercial rationale be included in the structure to avoid any potential challenge by tax authorities.

In many cases, the returns on investment will be yielded in the future. However, it is important to provide substance to the Mauritius Company well before there is any claim for treaty benefits.

## Conclusion

Mauritius continues to be used as a platform for investment into Africa and Asia and to reinforce its reputation as a jurisdiction of substance through its network of IPPAs, DTAAAs and other such agreements. A testimony to this is the December 2012 visit from International Monetary Fund Managing Director Christine Lagarde, which resulted in the signing of a memorandum with the Government of Mauritius to locate the Africa Training Institute in Mauritius. As reported in the press, the Australian Agency for International Development and the Chinese authorities have also pledged support for this initiative.

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## About the Author

### Gary Gowrea



*Gary Gowrea is Managing Director at Cim Tax Services. He has more than 15 years of experience in international tax and advises on tax structures set up by multinational corporations, fund managers and high net worth individuals. He is also a member of the operational committee of Global Institutional Investors Forum and sits on various committees dealing with fiscal matters as well as double taxation avoidance agreements. He has been a speaker at several local and international conferences and is a Member of the Society of Trust and Estate Practitioners (UK) and the International*

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