THE GLOBAL MINIMUM TAX
And its impact on Mauritius

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The Global Minimum Tax ("GMT") is now a reality as it has obtained the approval of some 133 countries across the world. This is a landmark proposal of John Bidden, President of the United States, which has first obtained the G7 approval , followed by the G20. Initial disagreement of the applicable has now been settled at 15%. Will such a measure affect the Mauritian jurisdiction is a question of importance and this article attempts to analyse the situation.

What is the Global Minimum Tax?

GMT is a tax regime established by international agreement whereby countries adhering to the agreement would impose a specific minimum tax rate on the income of corporations subject to the respective jurisdictions' tax laws. Each country would be entitled to the revenue generated by the tax. The agreement would prescribe a definition of "income", a 'taxable base' and some other technical rules. The eventual objective of GMT is twofold: (1) first of all to increase the level of 'direct taxation' of Multinationals Enterprises ("MNEs") and (2) to discourage nations from tax competition through lower tax rates that result in corporate profit shifting to their locations and tax base erosion in the countries where the MNEs originate.

The rate of the GMT is 15% and the OECD estimates that it will yield some USD 150 billion in additional tax revenue on an annual basis
It is evident that the GMT will not be self-implementing . Each country will need to adopt this new taxation rule in its own local laws. It therefore makes no doubt that there will be immense pressure on small jurisdictions like Mauritius to follow the rules as it has been for the adoption of OECD BEPS, MLI and other tax governance issues.

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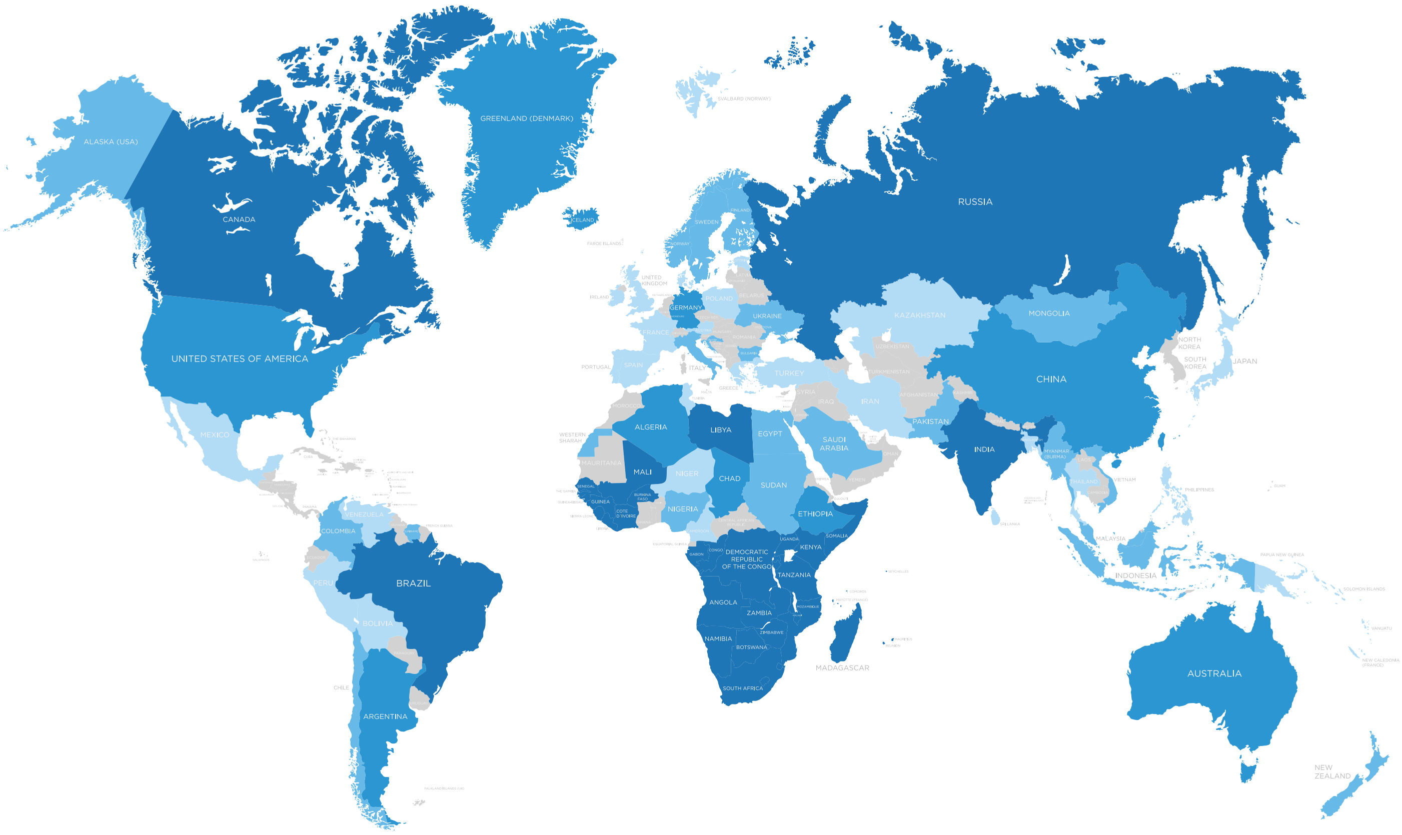

Why has this tax emerge in the global tax landscape?

The reason which has prompted the emergence of the GMT is that Multinationals which operate in different economies have structured their businesses in such a way as to shift their profits or a substantial part thereof to low-tax jurisdiction and pay less taxes thereon. This represents an 'erosion' of the base profits in the countries where such Multinationals originate.

Companies which will fall within the scope of the GMT are essentially multinationals with global turnover above 20 billion euros and a pre-tax profit margin above 10%, with the turnover threshold possibly coming down to 10 billion euros after seven years following a review.

Extractive industries and regulated financial services are to be excluded from the rules on where multinationals are taxed.

The practical application

The practical application of GMT is simple. If a US-based multinational incorporates an entity in a low-tax jurisdiction to accumulate part of its profits whether in the form of 'Royalties' or otherwise and where it pays only 8% corporate tax, the US Tax Authority will be entitled to recover 7% from that Multinational as a topping up to reach 15%. This is the case for big Multinationals like Apple, Amazon, Google etc.

With the advent of digitalization, it is true that the concept of a 'Physical Presence' to determine where a company has its 'Permanent Establishment' will no longer be valid anymore. This will entail important changes in the concept of 'Tax Residence' which is crucial in taxing rules.

Countries like UK and India have already taken steps to introduce new taxes for digital services. In April 2020, the UK has introduced the 'Digital Service Tax' and India has introduced the 'Equalisation Levy' at the rate of 2% to tax e-commerce companies and social media adverts by non-residents.

Implications for Mauritius

Mauritius does not harbour a lot of multinationals and the effects on our jurisdiction will be minimal but as time goes on it is very likely that countries would like to apply the gmt to all types of income in order to neutralise tax benefits obtained in business structuring. In the long term this may cause considerable damage to our global business sector.

For now, mauritius is already applying a corporate tax rate of 15% to both domestic and global business entities which means that it will already be getting its 'full share' of the tax which multinationals would be paying thus avoiding such companies to be exposed to gmt.

Since 2019, mauritius has been prompted by the oecd to incorporate the 'controlled foreign company' ("cfc") rule in our law. This applies to a foreign company which is not found in mauritius but which is controlled by more than 50% from mauritius. The cfc is required to pay tax in mauritius on its 'undistributed income' if it results from non-genuine transactions done to obtain a tax benefit. This has been another initiative to derail tax structuring .

Still, there are a few structures which will need to be re-visited as they would definitely attract attention since they result in 'deferred taxation' or no taxation at all and we need to mention the 'global headquarters administration licence' or the 'global legal advisory service' which enjoy a 5-year tax holiday period. In the longer term the application of 'partial exemption' is likely to be questioned by the oecd and the bigger nations ...... and this unfortunately might augur the end of 'global business' altogether!

To end on a positive note, mauritius has always shown resilience in the face of adversity and drastic changes. We can only hope that we shall remain innovative enough to find out ways to maintain our competitive advantages.

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