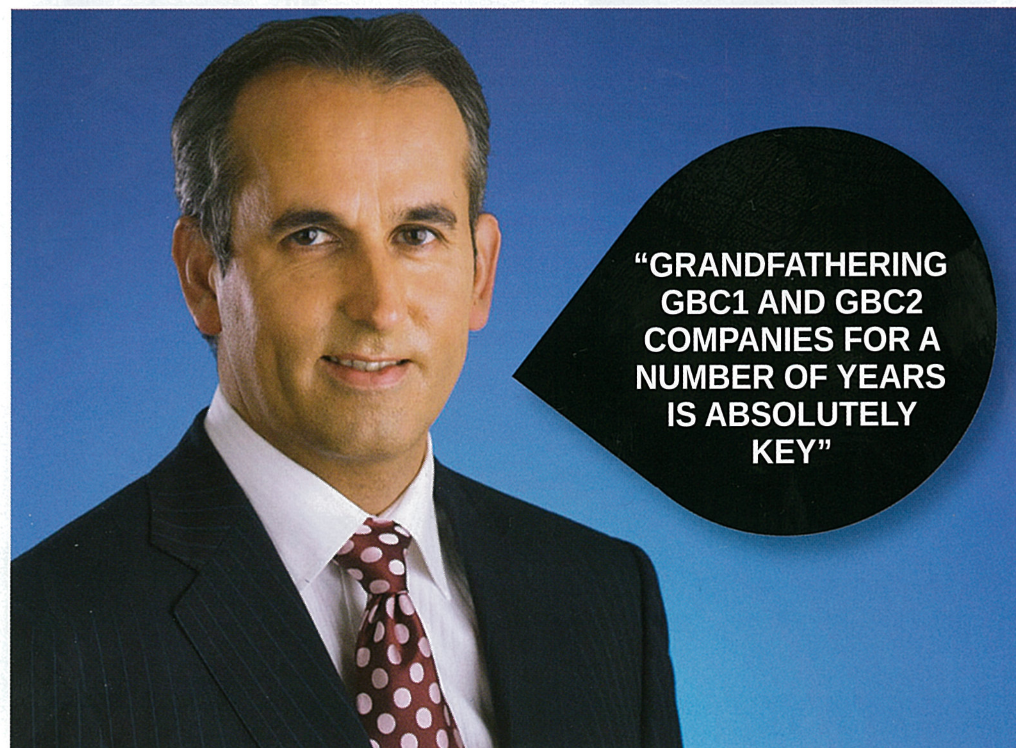
coverstory

"GBC1 AND GBC2 CANNOT CONTINUE IN THE FUTURE"

All financial centres will have to abide by the new tax regime and the regulations of the OECD and European Union, failing which they will be blacklisted. Three tax experts from KPMG, John Riva (KPMG Islands Group), Girish Vanvari (KPMG India) and Wasoudeo Balloo (KPMG Mauritius), provide insight on this hot issue.



"GRANDFATHERING GBC1 AND GBC2 COMPANIES FOR A NUMBER OF YEARS IS ABSOLUTELY KEY"

BUSINESSMAG. How is the global business sector faring in the midst of all the changes taking place internationally such as the Foreign Tax Account Compliance Act (FATCA) by the US, the Base Erosion ad Profit Shifting (BEPS) initiative by the Organisation for Economic Co-operation and Development (OECD) and the Common Reporting Standards (CRS)?

John Riva: I personally think it is fine. The whole tax span agenda has been coming down the line for some time and businesses have dealt with that extremely well. We moved away a long time ago from hiding identity of beneficial ownership. In this environment, if you advise on a structure, it needs to work on the basis that all the information is available to the tax authorities and you shouldn't be implementing any type of structure that would embarrass you if it were disclosed. This is a very typical sniff test.

Businesses have realised that a long time ago, and CRS is mainly the ability to pass on information to the tax authorities. One of the biggest problems is BEPS Action 5 on harmful practices and the EU code of conduct on business taxation. The EU is currently undergoing a review of how they blacklist jurisdictions and have implemented a three-stage approach. The first stage was to determine which jurisdiction had some connectivity with the EU and they listed 90 odd countries. Mauritius was part of it and that wasn't the blacklist however. It just meant that they needed to go to stage two; which is the important one. Stage two determined whether the rules within Mauritius complied with certain criteria. First, the transparency agenda on which Mauritius is fine because it implemented CRS and has passed the global forum standard on automatic exchange of information. Stage three is the BEPS initiative. Since Mauritius is part of the inclusive framework on BEPS, it has already passed that condition.

There is another condition which is fair taxation. There are two criteria which need to be considered under this. The first one is whether it has any harmful tax measures in accordance to the EU code of conduct on business taxation. This code of conduct was issued on the 1st December 1999. So it has been going for some time. When you look at the conditions, it would seem that the GBC1 and GBC2 might not pass this. This is because, firstly, the GBCs are ring-fenced: which means that not all businesses can obtain a GBC1 or GBC2 licence. Secondly, it is only available to non-Mauritian residents and, thirdly, it provides preferential tax treatment. So it is likely that GBC1 and GBC2 will be viewed as harmful tax practices. There is likely to be a requirement to change the rules.

BUSINESSMAG. Existing businesses will have to reinvent themselves with the review of GBC1 and GBC2 criteria. Are they ready?

John Riva: There is clearly an expectation that Mauritius will change its tax rules but will continue doing business. It is about how you deal with this. Grandfathering GBC1 and GBC2 companies for a number of years is absolutely key. The legislation needs to change and this cannot happen overnight. We cannot change overnight. For instance, when the Crown Dependencies changed their legislation, they grandfathered their harmful tax practices for five years. It took that much time to change the legislation, talk to clients and the industry and tell them what they propose to do so that it didn't come as a shock. There needs to be some form of partnership between government and business alike to see how Mauritius can actually change its legislation to accommodate the EU code of conduct.

BUSINESSMAG. Do you imply that we are compliant but are not proactive?

John Riva: I think you are compliant on all international standards. But there has to be a change in domestic legislation. GBC1 and GBC2 cannot continue in the future. They have to change somehow. It can be done: there are a number of measures that have been accepted by the EU code of conduct which Mauritius can look at and see whether it is appropriate for you.

BUSINESSMAG. What explains the insistence of the OECD to change the structure of GBCs and what is wrong with the current model?

John Riva: The OECD feels that it provides a preferential tax regime for non-residents and that tax is being used as an incentive to move business away to other jurisdictions like Mauritius. A preferential tax rate of 3 per cent is being offered for businesses to move to Mauritius while the country taxes domestic companies at 15 per cent. That's felt to be harmful. The code of conduct seeks to have a level playing field. You would be fine to charge your international companies at 3 per cent if you also charge your domestic companies at the same rate.

BUSINESSMAG. How are Mauritius' competitors in the region and globally adapting themselves?

John Riva: We had a number of harmful tax practices in Jersey: we were told that we could no longer operate those under the EU code of conduct and so we grandfathered them for about five years. We changed the legislation and that cost us a lot of money. We lost a fifth of our tax revenues and had to introduce other tax measures to counterbalance that. It needs to be recognised that changing your tax system does produce some winners and some losers as well. This isn't going to be a seamless change; that is why you need to have the grandfathering provision because change cannot happen overnight.

"MAURITIUS HAS TO RE-EMERGE AS A PREFERRED DESTINATION FOR PROVIDING DEBT IN INDIA"

BUSINESSMAG. Mauritius as an IFC has been the preferred investment route into India. How is the revision of the tax treaty between Mauritius and India impacting business? Right now, a lot of operators are in the dark when it comes to reengineer their business after 2019 when the 50 per cent waiver on tax expires…

Girish Vanvari: I think there are three things. First, all existing investments are grandfathered. Secondly, investments made now and which are sold off in the two year time frame are making people invest through Mauritius for this concession today also. All Foreign institutional investors and Foreign portfolio investors money is still routed through Mauritius because the short-term capital gains tax is at a 50 per cent concessional rate. The third and the biggest opportunity is what happens to the debt because of the concessional interest rate of 7.5 per cent on interest paid to Mauritian companies and that's the biggest opportunity as far as the Mauritius sector is concerned. What is happening in India is a lot of resolution to resolve non-performing assets' money going into infrastructure and real estate; many of these structures are debt structures. So, Mauritius has to re-emerge as a preferred destination for providing debt in India. That's the biggest opportunity which Mauritius has to take.

BUSINESSMAG. It is easier said than done to re-emerge as the preferred destination…

Girish Vanvari: It is because business is re-opening today. If you market yourself with that concessional rate of 7.5 per cent among the global community, you will have a better outcome. The capital gains tax is only for two years; the debt is forever. The worry is on multilateral instruments and how they will change the grandfathering and impact this concessional rate and the concessional 50 per cent tax exemption for two years. Will they carve this out as an exception or as a reservation? If you don't carve it out as a reservation, there will be a problem in the continuity of the treaty and the two advantages which are there today may not sustain.

Continued on page 24

Continued from page 23

BUSINESSMAG. Do you feel we are moving towards a treaty-less regime with all the changes imposed by FATCA and BEPS?

Girish Vanvari: I would think so. We are moving towards a situation that would not lead to double-taxation but eliminate zero taxation. The idea of the treaty is to avoid double taxation not lead to no taxation. I think with the multilateral instruments, governments are saying you have to pay tax somewhere. You cannot say it's not taxable anywhere. Zero taxation will not work but there is a concessional tax regime in Mauritius. How much of that will sustain is something which we have to work on.

"THERE IS A TENDENCY TO SET UP BIGGER FUNDS THROUGH SINGAPORE"

BUSINESSMAG. What will be the future of Mauritian financial sector after BEPS and post-April 2019?

Girish Vanvari: The future will change because the days of having a complete monopoly on investments into India through its treaty network have gone away. The future of it would depend on how much you re-emerge on the debt platforms. People are used to doing business in Mauritius; there is a system in place here. You have the structure, and relationships and the account service providers have a hold on the investors. What they have to do is go and market their India advantage on the debt to the same clients they have currently. You have to tap into that market.

BUSINESSMAG. What is the mood among global investors when it comes to this whole new spectrum regarding Mauritius?

Girish Vanvari: As far as India is concerned, there are only two jurisdictions we would evaluate: Singapore and Mauritius. There is a tendency to set up bigger funds through Singapore because investors believe that they can build substance better than in Mauritius over there. The country is closer to China and different cities in the region. There is a temptation to be based over there. For funds that are not among the top 5 or top 7, they really do not have any substance in Singapore. They prefer Mauritius over Singapore because they believe Mauritius is a better regime to operate smoothly. When we look at the set-up of funds today, 8 out of 10 funds will still choose Mauritius over anything else because that is a proven business model which is easy to execute and implement.

BUSINESSMAG. What about investors that are not looking at the Indian market?

Girish Vanvari: It's either Africa or India. There are no other markets where you can make good investments.

Wasoudeo Balloo: Over time, Mauritius has emerged as a natural gateway to Africa for a number of reasons. One is our proximity and the other is because we have a very good treaty network with African countries, especially Eastern and Southern Africa. More importantly is South Africa, where we have seen a number of companies wanting to expand in Africa using Mauritius as a base for their investment in other African countries. This is not necessarily tax-related.

When we look at all the structures, the statistics show that most of the companies being set up now are investing into Africa. A number of them are actually using the infrastructure of Mauritius. They are not here for tax reasons. They are here for the infrastructure we offer.

BUSINESSMAG. But the volume is not the same…

Wasoudeo Balloo: Absolutely, but it is picking up and rapidly. We need to continue improving on the infrastructure and develop other areas. For example, Jersey is known for its wealth management industry and when we look at the Africa Wealth Report, we see a lot of high net worth individuals emerging from the continent. There are successful family businesses in Africa. This is an opportunity for us to learn from what Jersey has done to be a wealth management centre for Africa.