"Responding to the US FATCA: Complain but Comply?"

Keynote Address by Mr Rundheersing Bheenick, Governor, Bank of Mauritius, at the Seminar on Foreign Account Tax Compliance Act, organized by Grant Thornton Mauritius, in collaboration with Grant Thornton UK, and the Mauritius Bankers Association, Ebène, 14 March 2012

It is a great honour for me to be here this afternoon. I welcome the opportunity to address this forum on a subject that has led to so much heated debate and to such a huge outcry in the financial sector worldwide. The Foreign Account Tax Compliance Act (FATCA) has been badly-received, described in uncomplimentary terms, and attacked from many quarters. It has been hailed as:

> *"A US-centric law";*
> *"An attempt to convert foreigners into unpaid IRS agents";*
> *"A kind of US backward imperialism";*
> *"…a murder weapon and the US government the assailant";*
> *"An atomic bomb used to kill a fly";* and
> *"One of the worst pieces of legislations to be revealed in recent times".*

As you can see, FATCA does not leave anybody indifferent! The attendance this afternoon well reflects the extent of our concern here in Mauritius.

What is this FATCA? A quick recap

FATCA was enacted on 18 March 2010 as part of the Hiring Incentives to Restore Employment Act. It seeks to identify US taxpayers who hold financial assets in non-US financial institutions and other offshore accounts, so that they cannot avoid their US tax obligations. FATCA focuses on high net-worth individuals (the so-called "FAT-CAts").

What does compliance with FATCA involve?

FATCA requires foreign financial institutions (FFIs) to report directly to the US Internal Revenue Service (IRS) certain information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest. The FFIs would have to enter into a special agreement with the IRS. In case any FFIs do not agree to comply, they would be subject to a 30 per cent withholding tax.

Should we be scared of this so-called murder weapon?

Well, the aim of FATCA is to collect taxes. It is the right of the US government, as it is of any government, to levy taxes on its citizens. The US Senate estimates revenue losses from tax evasion by US-based firms and individuals at around 100 billion dollars a year. Add in other countries, and the sums run into many billions more. As all of us are aware, tax transparency and the fight against cross-border tax evasion have been key topics at successive G20 Summits in Washington, London, Pittsburgh, Toronto, Seoul and Cannes.

Mauritius – a clean and transparent jurisdiction

It is quite some time since Mauritius also embarked on a profound reform of its fiscal system to make it simpler, more effective and conducive to economic development. We offer certain fiscal advantages that encourage local and foreign companies to set up business in Mauritius. These include competitive corporate and income taxes of 15 per cent, no capital gains tax and no withholding tax on interest and dividends. At the same time, we have enlarged our tax base. In fact, the idea to enlarge our revenue collection base dates back to 1995 when, as some of you will recall, I was wearing the hat of Minister of Finance. The measures which I had then initiated paved the way for the introduction of the Value Added Tax. The sustained reforms to our tax system earned us commendable rankings in the *Paying Taxes 2012* report, conducted jointly by the World Bank, the International Finance Corporation and PricewaterhouseCoopers (PwC) to compare tax systems in 183 economies around the world. In 2012, Mauritius improved its global position by two notches from 11th in 2011 to 9th. And in Africa, Mauritius is No 1.

Mauritius is by no means a tax haven. All our policy decisions and actions promote the country as a clean and transparent jurisdiction. In 2000, when the Organisation for Economic Cooperation and Development (OECD), the *chien de garde* in the fight against tax avoidance and tax evasion, threatened to place Mauritius on the list of tax havens, we were one of the first countries to commit ourselves to eliminate any harmful tax practice from our tax regime, and to a programme of effective exchange of information in tax matters and transparency. We were in fact the first country to give such a commitment.

We took significant steps to enhance our exchange of information and our legal and regulatory framework. We currently have 36 Double Taxation Avoidance Agreements (DTAA) in force, and there are three others awaiting ratification. The first DTAA we signed, with Germany, dates back to March 1978. In December 2010, Mauritius signed a Tax Information Exchange Agreement with Australia and there are others in the pipeline. Mauritius has never refused to sign an exchange of information agreement. In January 2011, the OECD commented favourably on our jurisdiction. We are now on the OECD "White List" as a jurisdiction with acceptable tax standards in compliance with OECD norms and best-practice principles. We fully cooperate with other competent authorities on effective exchange of information. And we are recognised by the World Bank, the IMF, and the Financial Action Task Force (FATF) as a clean and transparent jurisdiction with a sound legal, regulatory and supervisory framework.

For the last ten years, the Central Bank has taken measures to enhance KYC procedures for institutions falling under its purview. We have issued Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT). Under these guidance notes, which comply with the International Standards of the FATF on AML/CFT, tax evasion is a predicate offence for money laundering.

So, it is my considered view that there is no need for us to be scared of FATCA. You would agree that we have gone a long way towards enhancing the effectiveness of our jurisdiction in our fight against tax avoidance and tax evasion. However, I do concede that compliance with FATCA would entail a number of changes at the level of our financial institutions.

What does complying with FATCA entail for Mauritius?

As matters stand, complying with FATCA would involve breaching a number of local laws on privacy, confidentiality and equal opportunities. There would also be heavy cost implications. But non-compliance would be equally costly in that there would be a withholding on passthru payments[1].

However, the choice that we are faced with today goes beyond purely financial considerations. We have to look at the bigger picture. We cannot act in isolation. We live in a global world and we are impacted by measures that are taken elsewhere.

When the Bank for International Settlements came up with the Basel II framework, many countries found that the requirements of Basel II were too cumbersome and costly. Our banks did incur significant costs in beefing up their risk management structures to comply with the Basel II Framework. But today it is clear that such investments have paid off. We can boast of a sound and resilient banking system. We have not suffered from any bank failures as compared to more advanced countries.

FATCA-Partnership Agreement

Mauritius has never been one to shy away from hurdles. But does this mean that our financial institutions should be transformed as revenue collectors for the US? In my opinion, the best way to tame the beast would probably be for Mauritius to enter into FATCA Partnerships as other jurisdictions have done.

You would be interested to know that in February last, five European countries – France, Germany, Spain, Italy and the UK – signed a deal with the US. They agreed that they would each enact legislation requiring their local FFIs to collect and report FATCA-style information to their local tax authorities. The European jurisdictions would then transfer the information to the US. Under such arrangements, the withholding on passthru payments would generally only apply to third-country non-participating FFIs. The obligations under the agreement are reciprocal.

However, in order to enter into such a FATCA Partnership, Mauritius would need to amend its laws to address any conflict of laws issues that could arise. The advantage of entering into such a Partnership is that Mauritius would not only avoid any potential damage to its reputation, in case of non-compliance, but it may benefit from an enhanced "clean" image, since compliance with FATCA would require more detailed information-gathering and due diligence procedures.

The downside of this is that Mauritius might well lose some of its US clients. However, if the tide is in favour of FATCA compliance, the US clients might well realize that they have no real alternative: opting for a non-FATCA-compliant jurisdiction might well be costlier as they would be hit with the 30 per cent withholding tax. At any rate, the attractiveness of the Mauritian

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[1] As per FATCA, a passthru payment is any withholdable payment or other payment to the extent attributable to a withholdable payment

financial sector lies in the fiscal and other advantages it has to offer, and not in any banking secrecy laws.

Nonetheless, Mauritius cannot blindly rush into adopting a FATCA Partnership Agreement with the US. There is a host of questions that first need to be addressed. Are our financial institutions ready to respond to, and comply with, FATCA requirements? Does the Mauritius Revenue Authority (which would probably be the authority designated to conduct these operations) have the capacity – financial and otherwise – to cope with the requirements imposed by the proposed FATCA Partnership? In sum, are our institutions ready to rise to the challenge?

This Seminar will help us in our search for answers to these and related questions. Let me commend Grant Thornton and the Mauritius Bankers Association (MBA) for this initiative. It will help to clear the air and point the way forward by helping our financial institutions, which would be impacted by FATCA, to gain an in-depth understanding of this piece of legislation. It is in this same perspective that the Bank of Mauritius and the MBA have recently set up a Joint Working Group to evaluate the impact of FATCA on banks in Mauritius.

On a concluding note, may I draw your attention to the fact that so far, the US is the only country which taxes its citizens on the basis of nationality. Interestingly, outgoing President Nicolas Sarkozy has recently announced that should he win the presidential elections, France would also tax its citizens on the basis of nationality. So it might well be that FATCA which had been accused of being "a kind of US backward imperialism", might become the new reality, the new norm.

One final comment, whilst I understand the difficulties that our institutions might face in complying with FATCA, I have only one advice for them: Complain but Comply!

Thank you.