

**Agreement for the Allocation of Taxing Rights with respect to certain Income of
Individuals and to establish a Mutual Agreement Procedure in respect of
Transfer Pricing Adjustments (Australia) Regulations 2011**

GN No. 23 of 2011

THE INCOME TAX ACT

**Regulations made by the Minister under section 76
of the Income Tax Act**

1. These regulations may be cited as the **Agreement for the Allocation of Taxing Rights with respect to certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments (Australia) Regulations 2011**.

2. In these regulations -

"Agreement" means the agreement entered into with the Government of Australia in pursuance of section 76 of the Income Tax Act and set out in the Schedule to these regulations.

3. The Agreement shall come into operation on such date as specified by the Minister in a notice published in the Government Gazette.

Made by the Minister on 18 January 2011.

SCHEDULE

[Regulation 2]

The Government of the Republic of Mauritius and the Government of Australia,

Recognising that the two Governments have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

- 1 The existing taxes to which this Agreement shall apply are:
 - (a) in Australia, the income tax imposed under the federal law of Australia; (hereinafter referred to as "Australian tax").
 - (b) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax").
- 2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

- 3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting State.

ARTICLE 3

DEFINITIONS

- 1 For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "Australia", when used in a geographical sense, excludes all external territories other than:
- (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,
- and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;
- (b) the term "Mauritius" means the Republic of Mauritius and includes;
- (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and

- (iii) any area outside the territorial sea of Mauritius which in accordance with the international law has been or may hereafter be designated under the laws of Mauritius as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.
- (c) the term "competent authority" means,
 - (i) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner; and
 - (ii) in the case of Mauritius, the Director General of Mauritius Revenue Authority or an authorised representative of the Director General.
- (d) the term "Contracting State" means Australia or Mauritius, as the context requires;
- (e) the term "national", in relation to a Contracting State, means any individual possessing the nationality or citizenship of that Contracting State;
- (f) the term "person" includes an individual, a company and any other body of persons;
- (g) the term "tax" means Australian tax or Mauritian tax, as the context requires; and
- (h) the term "transfer pricing adjustment" means an adjustment made by the competent authority of a Contracting State to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that State regarding transfer pricing.

2 As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

- 1 For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
 - (b) in the case of Mauritius, a person who, under the income tax law of Mauritius, is liable to tax therein by reason of his residence.
- 2 A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
- 3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person's status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the State of which the individual is a national;
 - (c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.
- 4 Where, by reason of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

PENSIONS AND RETIREMENT ANNUITIES

- 1 Pensions (including government pensions) and retirement annuities paid to an individual who is a resident of a Contracting State shall be taxable only in that State. However, pensions and retirement annuities arising in a Contracting State may be taxed in that State where such income is not subject to tax in the other Contracting State.

- 2 The term "retirement annuity" means:
 - (a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;

 - (b) in the case of Mauritius, a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payment in return for adequate and full consideration in money or money's worth; and

 - (c) any other similar periodic payment agreed upon by the competent authorities.

ARTICLE 6

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or

- (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Contracting State.

ARTICLE 7

STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided such payments arise from sources outside that State.

ARTICLES 8

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

- 1 Where a resident of a Contracting State considers the actions of the other Contracting State results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the first-mentioned State. The case must be presented within 3 years of the first notification of the adjustment.
- 2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting State regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9

EXCHANGE OF INFORMATION

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Contracting States (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting State).

ARTICLE 10

ENTRY INTO FORCE

The Government of Australia and the Government of the Republic of Mauritius shall notify each other, in writing, through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement on the Exchange of Information with Respect to Taxes is in force between Australia and the Republic of Mauritius, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of Mauritius tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 11

TERMINATION

- 1 This Agreement shall continue in effect indefinitely, but either of the Contracting States may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination.
- 2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
 - (b) in respect of Mauritius tax, in the year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.
- 3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement on the Exchange of Information with Respect to Taxes between the Contracting States, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Port Louis, this 8th day of December, 2010, in duplicate in the English language, both texts being equally authentic.

Hon. Pravind Kumar JUGNAUTH

Vice-Prime Minister,
Minister of Finance and
Economic Development

FOR THE GOVERNMENT OF
THE REPUBLIC OF MAURITIUS

H. E. Mrs. Catherine JOHNSTONE

High Commissioner

FOR THE GOVERNMENT OF
AUSTRALIA
