Government Notice No. 156 of 2016

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 Double Taxation Convention (India) (Amendment) Regulations 2016.

2. In these regulations –

"principal regulations" means the Double Taxation Convention (India) Regulations 1983.

3. Regulation 2 of the principal regulations is amended –

(a) in the definition of Convention, by deleting the words "Schedule to these regulations" and replacing them by the words "First Schedule as amended by the Protocol set out in the Second Schedule";

(b) by adding the following new definition, the full stop at the end of the definition of "Convention" being deleted and replaced by a semicolon –

"Protocol" means the Protocol amending the Convention between the Government of Mauritius and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed at Port Louis on 10 May 2016, and set out in the Second Schedule.

4. The principal regulations are amended –

(a) by deleting the word "**SCHEDULE**" and replacing it by the words "**FIRST SCHEDULE**";

(b) by adding the Second Schedule set out in the Schedule to these regulations.

5. The Protocol shall come into operation on such date as the Minister may specify in a notice to be published in the *Gazette*.

Made by the Minister on 15 July 2016.

SCHEDULE

[Regulation 4]

SECOND SCHEDULE

[Regulation 2]

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, AND FOR THE ENCOURAGEMENT OF MUTUAL TRADE AND INVESTMENT, SIGNED AT PORT LOUIS ON 24TH AUGUST 1982

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

Desiring to amend the Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and for the encouragement of mutual trade and investment, signed at Port Louis on 24th August, 1982 (hereinafter referred to as "the Convention");

Have agreed as follows:

Article 1

Article 5 (Permanent Establishment) of the Convention shall be amended by inserting in paragraph 2 the following new sub-paragraph:

"(j) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) for a period or periods aggregating more than 90 days within any 12-month period."

Article 2

Article 11 (Interest) of this Convention shall be amended by:

(i) replacing paragraph 2 with the following:

"However, subject to provisions of paragraphs 3, 3A and 4 of this Article, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest,";

(ii) deleting the paragraph 3(c); and

(iii) inserting a new paragraph 3A as follows:

"Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by any bank resident of the other Contracting State carrying on *bona fide* banking business. However, this exemption shall apply only if such interest arises from debt- claims existing on or before 31st March, 2017."

Article 3

The Convention is amended by adding after Article 12 the following new Article:

"Article 12A

FEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" as used in the Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political

sub-division, a local authority, or a resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 4

Article 13 (Capital Gains) of the Convention shall be amended with effect from 1.4.2017, by:

(i) inserting - new paragraphs 3A and 3B as follows:

"3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.

3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated"; and

(ii) replacing the existing paragraph 4 with the following:

"4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident."

Article 5

Article 22 (Other Income) of the Convention shall be amended by inserting after paragraph 2 the following new paragraph:

"3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State."

Article 6

Article 26 (Exchange of Information or Document) of the Convention shall be replaced by the following Article:

"Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies thereof) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall

be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information including documents and certified copies thereof which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to

supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Article 7

The Convention is amended by adding after Article 26 the following new Article:

"Article 26A

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be

collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provision of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owned by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State

has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be –

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

Article 8

The Convention is amended by adding after Article 27 the following new Article:

"Article 27A

LIMITATION OF BENEFITS

1. A resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention if its affairs were arranged with the primary purpose to take advantage of the benefits in Article 13(3B) of this Convention.

2. A shell/conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention. A shell/ conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

3. A resident of a Contracting State is deemed to be a shell/conduit company if its expenditure on operations in that Contracting State is less than Mauritian Rs.1,500,000 or Indian Rs. 2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.

4. A resident of a Contracting State is deemed not to be a shell/ conduit company if:

(a) it is listed on a recognized stock exchange of the Contracting State; or

(b) its expenditure on operations in that Contracting State is equal to or more than Mauritian Rs.1,500,000 or Indian Rs.2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.

Explanation: The cases of legal entities not having bona fide business activities shall be covered by Article 27A (1) of the Convention.

Article 9

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications.

2. The provisions of Articles 1, 2, 3, 5 and 8 of the Protocol shall have effect:

(a) in the case of India, in respect of income derived in any fiscal year beginning or after 1 April next following the date on which the Protocol enters into force;

(b) in the case of Mauritius, in respect of income derived in any fiscal year beginning on or after 1 July next following the date on which the Protocol enters into force;

3. The provisions of Article 4 of this Protocol shall have effect in both Contracting States for assessment year 2018-19 and subsequent assessment years.

4. The provisions of Articles 6 and 7 of this Protocol shall have effect from the date of entry into force of the Protocol, without regard to the date on which the taxes are levied or the taxable years to which the taxes relate.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Protocol.

DONE in duplicate at Ebene this 10th day of May 2016, in the English and Hindi languages, both texts equally authentic. In the case of divergent interpretation of the texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS	FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA
Mr. Dharam Dev MANRAJ, GOSK	**H. E. Mr. Anup Kumar MUDGAL**
Financial Secretary	**High Commissioner**