

Income Tax (Foreign Tax Credit) Regulations 1996

GN 80/1996

29 July 1996]

[Sections 77 and 161]

1. Short title

These regulations may be cited as the **Income Tax (Foreign Tax Credit) Regulations 1996**.

2. Interpretation

In these regulations –

“Act” means the Income Tax Act;

“arrangement” means an arrangement entered into by the Minister with the Government of a foreign country under section 76 of the Act;

“corporation” has the same meaning as in the Financial Services Act; “Mauritius tax” means income tax imposed under the Act;

“underlying tax” has the meaning assigned to it in regulation 7(1).

Amended by reg. 3(a) of [\[GN No. 163 of 1998\]](#) w.e.f. 17 October 1998; s. 46(16)(a) of [\[Act No. 13 of 2001\]](#) w.e.f. 1 December 2001; reg. 3(a) of [\[GN No. 78 of 2003\]](#) w.e.f. 21 June 2003; s. 103(5)(a) of [\[Act No. 35 of 2004\]](#) w.e.f. 10 November 2004; reg. 3(a) of [\[GN No. 169 of 2005\]](#); w.e.f. year of assessment commencing 1 July 2005; reg. 3(a) and (b) of [\[GN No. 178 of 2007\]](#) w.e.f. 12 October 2007; reg. 3 of [\[GN No. 55 of 2011\]](#) w.e.f. 1 January 2011; reg 3 of [\[GN No. 129 of 2018\]](#) w.e.f 1 January 2019

3. Credit for foreign tax

(1) Subject to section 77 of the Act and to these regulations, credit shall be allowed for foreign tax on the foreign source income of a resident of Mauritius against Mauritius tax computed by reference to the same income.

(2) Where credit is allowed against Mauritius tax chargeable in respect of any income, the amount of Mauritius tax so chargeable shall be reduced by the amount of the credit.

(3) Where Mauritius tax is charged on the amount of income received in Mauritius, credit for foreign tax shall only be allowed for so much of the foreign tax as is imposed on

the amount of the income actually received in Mauritius.

4. Creditable foreign tax

(1) No credit shall be allowed under section 77 of the Act unless the foreign tax is a tax on income and is of a similar character to Mauritius tax.

(2) For any avoidance of doubt, any foreign tax which is charged by reference to a presumed amount of profit or income shall be regarded as of a similar character to Mauritius tax.

5. Computation of income subject to foreign tax

In the computation of the amount of any income in respect of which a credit for foreign tax is allowed –

- (a) no deduction shall be made for the foreign tax charged on that income; and
- (b) in the case of a dividend, any underlying tax in respect of which credit is allowed shall be added to the amount of that income.

6. Limit on foreign tax credit

(1) The amount of credit for foreign tax which may be allowed against Mauritius tax computed by reference to an amount of foreign source income shall be –

- (a) the amount of foreign tax proved or presumed in accordance with these regulations to have been charged on that income;
- (b) the amount of foreign tax which may be charged in the other country in accordance with any arrangement in force between Mauritius and the Government of that country; or
- (c) the amount of Mauritius tax computed in accordance with the following regulations by reference to that income,

whichever is the least.

(2) Where it is necessary for the purposes of paragraph (1)(c) to compute an amount of Mauritius tax, the amount of foreign source income shall be computed in accordance with regulation 5.

(3) In determining the amount of credit for foreign tax which may be allowed in

accordance with this regulation, the taxpayer may –

- (a) compute the amount by reference to all foreign source income, other than income specified in Part II of the Second Schedule to the Act, derived by him and which is chargeable to Mauritius tax in that year of assessment; or
- (b) compute the amount by reference to each item of foreign source income separately.

Amended by s. 103(5)(b) of [\[Act No. 35 of 2004\]](#) w.e.f. 10 November 2004; reg. 4 of [\[GN No. 55 of 2011\]](#) w.e.f. 1 January 2011; reg 4 of [\[GN No. 129 of 2018\]](#) w.e.f 1 January 2019

7. Underlying foreign tax credit

(1) Where a dividend is paid by a company which is not resident in Mauritius to a person who is resident in Mauritius and who owns directly or indirectly not less than 5 per cent of the share capital of the company paying the dividend, the credit allowed shall, in addition to any foreign tax charged on the dividend, whether directly or by deduction, include foreign tax charged on the income out of which the dividend was paid as underlying tax.

(2) A company not resident in Mauritius which pays a dividend receives a dividend, referred to in this regulation as “the secondary dividend”, from another company not resident in Mauritius of which it owns directly or indirectly not less than 5 per cent of the share capital, the underlying tax shall, in addition to any foreign tax charged on the secondary dividend, whether directly or by deduction, include the foreign tax charged on the income out of which that secondary dividend was paid.

(3) Paragraph (2) shall, in addition, apply where the company paying the secondary dividend receives a dividend from a company not resident in Mauritius of which it owns directly or indirectly not less than 5 per cent of the share capital and so on for any number of companies which have so received dividends.

(4) In computing the amount of underlying tax, any foreign tax charged on the profits out of which a dividend is paid shall be regarded as having been charged rateably on all the profits of the company paying the dividend.

(5) Where a resident of Mauritius is taxable on his share of income from a non-resident *société*, he shall be entitled to a credit in respect of any foreign tax borne by the non-resident *société* on such income.

(6) The amount of credit under paragraph (5) in respect of an income year shall be

computed by reference to the proportion which the income accruing to the resident bears to the total income of the *société* in that income year.

Amended by reg. 3 of [\[GN No. 154 of 2001\]](#) w.e.f. 3 November 2001.

8. Proof of charge to foreign tax

(1) Subject to this regulation and regulation 9, no credit shall be allowed in respect of foreign tax unless written evidence is presented to the Director-General showing the amount of foreign tax which has been charged.

(2) For the purposes of this regulation, “written evidence” includes a receipt of the relevant authorities of the foreign country for the foreign tax or any other evidence that the foreign tax has been deducted or paid to the relevant authorities of that country.

(3) -

Amended by reg. 3 of [\[GN No. 87 of 1997\]](#) w.e.f. 26 July 1997; reg. 3(b) of [\[GN No. 163 of 1998\]](#) w.e.f. 17 October 1998; s. 13 of [\[Act No. 25 of 2000\]](#) w.e.f. 11 August 2000; s. 46(16)(b) of [\[Act No. 13 of 2001\]](#) w.e.f. 1 December 2001; reg. 3(b) of [\[GN No. 78 of 2003\]](#) w.e.f. 21 July 2001; s.103(5)(c) of [\[Act No. 35 of 2004\]](#) w.e.f. 10 November 2004; reg. 3(b) of [\[GN No. 169 of 2005\]](#) w.e.f. year of assessment commencing 1 July 2005; reg 5 of [\[GN No. 129 of 2018\]](#) w.e.f 1 January 2019

9. Tax sparing credit

(1) Where the Director-General is satisfied that provisions have been introduced in the law of a foreign country with a view to promoting industrial, commercial, scientific, educational or other development in that country and that, under those provisions –

- (a) a lower rate of tax has been imposed in that country than would otherwise have been the case; or
- (b) income has been exempted from tax which would otherwise have been chargeable to foreign tax,

he shall allow a credit for the amount of foreign tax which would have been chargeable had those provisions not been enacted.

(2) For the purposes of regulation 6, the amount of foreign tax for which credit is to be allowed under this regulation shall be presumed to have been charged.

10. Transitional provisions

(1) (a) Notwithstanding regulation 6 and subject to subparagraph (b), where, in the case of a corporation issued with a Category 1 Global Business Licence under the Financial Services Act on or before 16 October 2017, written evidence is not presented to the Director-General showing the amount of foreign tax charged on its foreign income, the amount of foreign tax shall, up to 30 June 2021, continue to be equal to 80 per cent of the Mauritius tax chargeable with respect to that income.

(b) Subparagraph (a) shall not apply to —

- (i) such intellectual property assets acquired from a related party after 16 October 2017;
- (ii) such intellectual property assets acquired from an unrelated party, or to such newly created intellectual property assets, after 30 June 2018;
- (iii) income derived from such specific assets acquired, or projects started, after 31 December 2018, as the Director-General may determine.

(c) For the purpose of subparagraph (b) —

“intellectual property asset” includes any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan and any secret formula or process.

(2) Notwithstanding regulation 6, where, in the case of a company issued with a banking licence under the Banking Act on or before 16 October 2017, written evidence is not presented to the Director-General showing the amount of foreign tax charged on its foreign income, the amount of foreign tax shall, in respect of the year of assessment commencing 1 July 2019 and ending on the year of assessment commencing 1 July 2020, continue to be equal to 80 per cent of the Mauritius tax chargeable with respect to that income.

Added by reg 6 of [\[GN No. 129 of 2018\]](#) w.e.f 1 January 2019
