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**The Income Tax (Foreign Tax Credit) Regulations 1996**  
**GN 80 of 1996 - 20 July 1996**

**Regulations made by the Minister under sections 77 and 161 of the**  
**Income Tax Act 1995**

*Regulation*

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**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 1995;

"**arrangement**" means an arrangement entered into with the government of a foreign country under section 76 of the Act;

"**foreign source income**" means income which is not derived from Mauritius;

"**Mauritius tax**" means income tax imposed under the Income Tax Act 1995;

"**offshore bank**"<sup>(1)</sup>

"**offshore company**" and "**offshore trust**"<sup>(2)</sup>

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<sup>(1)</sup> Deleted by the Financial Services Development Act 2001. Effective as from 1.8.2001. Previously GN 163 of 1998 - 18.8.98 -

["**offshore bank**" has the same meaning as in the Banking Act 1988;]

<sup>(2)</sup> Deleted by the Financial Services Development Act 2001. Effective as from 1.8.2001. Previously -

["**offshore company**" and "**offshore trust**" -

(a) have the same meaning as in the Mauritius Offshore Business Activities Act 1992; and

(b) include a corporation certified to be engaged in international business activity by the Mauritius Offshore Business Activities Authority established under the Mauritius Offshore Business Activities Act 1992;]

"offshore société"<sup>(1)</sup>

“**qualified corporation**” means a corporation holding a Category 1 Global Business Licence under the Financial Services Development Act 2001 or a bank holding a Class B Banking Licence under the Banking Act 1988, as the case may be;<sup>(2)</sup>

"**underlying tax**" has the meaning assigned to it in regulation 7(1).

### 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 the 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

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<sup>(1)</sup> Deleted by the Financial Services Development Act 2001. Effective as from 1.8.2001. Previously - ["**offshore société**" means a société which is certified to be engaged in international business activity by the Mauritius Offshore Business Activities Authority established under the Mauritius Offshore Business Activities Act 1992;]

<sup>(2)</sup> Inserted by the Financial Services Development Act 2001. Effective as from 1.8.2001.

- (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 provisions of this regulation 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 -

- (a) the amount of foreign source income shall be computed in accordance with regulation 5; and
- (b) where the taxpayer is entitled to make any deductions in computing his chargeable income for the purposes of the Act, he may allocate those deductions to such foreign source income or income derived from Mauritius, as he wishes.

- (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 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.

## 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, referred to in this regulation as underlying tax.
- (2) Where a company not resident in Mauritius which pays a dividend has itself received 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 also apply where the company paying the secondary dividend has itself received 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 has been 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.<sup>(1)</sup>
- (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.<sup>(1)</sup>

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<sup>(1)</sup> Paragraphs (5) & (6) added by GN 154 of 2001 - 30.10.01.

## 8. Proof of charge to foreign tax

- (1) Subject to the provisions of this regulation and regulation 9, no credit shall be allowed in respect of foreign tax unless written evidence is presented to the Commissioner 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) **Notwithstanding regulation 6,**<sup>(1)</sup> where in the case of a **qualified corporation,**<sup>(2)</sup> written evidence is not presented to the Commissioner showing the amount of foreign tax charged, the amount of foreign tax shall nevertheless be conclusively presumed to be equal to **80 per cent**<sup>(3)</sup> of the Mauritius tax chargeable with respect to that income and computed in accordance with regulations 5 and 6.

## 9. Tax sparing credit

- (1) Where the Commissioner 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.

Made by the Minister on 20 July 1996.

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<sup>(1)</sup> The words "Notwithstanding regulation 6" inserted by GN 87 of 1997 - 18.7.97.

<sup>(2)</sup> The words "a qualified corporation" replaced "an offshore company, offshore bank<sup>(1)</sup>, offshore trust or offshore société" by the Financial Services Development Act 2001. Effective as from 1.8.2001.

<sup>(1)</sup> The words "offshore bank" inserted by GN 163 of 1998 - 18.8.98.

<sup>(3)</sup> The words "80 per cent" replaced "90 per cent" by FA 2000. Effective as from year of assessment 2003-04. Previously GN 87 of 1997 - 18.7.97, the words "90 per cent" replaced "80 per cent".