Tax News Update
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Mauritius Supreme Court clarifies the application of presumed foreign tax in context of the pooling basis

- *In UPL Corporation Ltd. v. The Revenue Tribunal & Anor, decided on 16 April 2026, the Mauritius Supreme Court (SC) overturned the Revenue Tribunal's restrictive interpretation of the Foreign Tax Credit (FTC) Regulations regarding the pooling basis for computing foreign tax credits.*
- *The SC confirmed that the FTC Regulations must be applied as a coherent whole, allowing a mixture of presumed foreign tax and actual foreign tax charged to be used in the pooling mechanism without additional restrictions.*
- *This judgment corrects an overly complex reading of the pooling rules and affirms that the pooling basis remains valid even when combining different types of foreign tax.*
- *Affected entities should review their foreign tax credits in light of this ruling, especially for periods up to 30 June 2021, and monitor whether the Mauritius Revenue Authority appeals the decision.*

Executive summary

On 16 April 2026, the Supreme Court of Mauritius (SC) delivered its judgment in *UPL Corporation Ltd. v. The Revenue Tribunal & Anor (2026 SCJ 161)*, ruling in favor of the Appellant and overturning the decision of the Assessment Review Committee (ARC).

The case concerns the computation of the foreign tax credit (FTC) under the pooling mechanism. In particular, it focuses on the narrow, albeit salient, point of whether the FTC Regulations supported the Mauritius Revenue Authority's (MRA's) position that the 80% presumed foreign tax could not be aggregated with the foreign tax charged whenever a qualified corporation applies the pooling basis.

The SC rejected the MRA's restrictive approach and confirmed that:

1. The FTC rules should be applied as a coherent whole.
2. It is not permissible to read additional restrictions into the legislation.

Although the 80% presumed foreign tax is no longer available, the decision confirms the basic interpretation and application of the FTC Regulations. Unfortunately, clarification on what is ultimately a relatively straightforward provision has only come after that aspect of the regime has been removed.

Detailed discussion

Facts

The Appellant is a Mauritian-resident company that held a Global Business License Category 1 (GBC 1) issued under the *Financial Services Act 2007*. For the years of assessment 2013 and 2016/17, the Appellant calculated its FTC by applying the pooling basis under regulation 6(3)(a) of the FTC Regulations.

The MRA disagreed with the methodology the Appellant used in computing its FTC under the pooling method and issued assessments accordingly. The ARC (now the Revenue Tribunal) issued a ruling upholding the MRA's view, leading the Appellant to appeal to the SC.

Background

The assessments that the MRA issued in the case concerned financial years that preceded reform of the Mauritian global business framework in 2018, through the *Finance (Miscellaneous Provisions) Act 2018*.

As a reminder, the GBC 1 license has become obsolete and was replaced by a Global Business License. The new Global Business License framework is designed to comply with the Organisation for Economic Co-operation and Development's (OECD's) Base-Erosion and Profit Shifting (BEPS) Action 5 by countering harmful tax practices. Accordingly, the revised Global Business License regime emphasizes the requirement for substance in Mauritius in the context of corporate tax incentives and levels the playing field between holders of the license and domestic companies by abolishing the preferential tax benefits available solely to GBC 1 license holders.

One such benefit was entitlement to an 80% presumed foreign tax on any foreign-sourced income. Effectively, a GBC 1 company could choose to compute the foreign tax for any foreign-source income by either applying the presumed foreign tax or taking into account the foreign tax suffered.

Pooling mechanism

If a taxpayer has various sources of foreign income, FTC Regulation 6(3) permits a choice between:

1. Computing each foreign-sourced income separately
2. Applying the source-by-source mechanism
3. Using the pooling mechanism under FTC Regulation 6(3)(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"

In its pooling computation, the Appellant utilized a combination of actual taxes suffered on certain foreign income sources and the 80% presumed foreign tax on the remaining foreign-sourced income.

The MRA challenged this approach, arguing that the pooling rules did not permit the Appellant to use a mixture of the presumed foreign tax and the foreign tax charged in the context of the pooling mechanism. The ARC upheld the MRA's position.

Issue before the SC

The question at issue before the SC was whether the FTC Regulations permitted the use of the presumed foreign tax under the pooling rules.

The ARC's approach effectively denied the availability of the presumed foreign tax by treating the pooling rules as if they imposed limitations on the use of foreign tax and, in doing so, read a restriction into the FTC Regulations that does not appear in law.

The SC rejected this interpretation. It held that the FTC Regulations must be read together as a single framework and additional constraints cannot be introduced through interpretation. Furthermore, any ambiguity should be viewed in the taxpayer's favor.

Analysis of the SC's judgment

The SC concluded that the FTC Regulations form a single framework, so provisions cannot be viewed in isolation. FTC Regulation 6(1) defines the foreign tax that may be credited, including the presumed FTC. FTC Regulation 6(3) then determines how the credit is calculated and does not operate to exclude a category of tax that FTC Regulation 6(1) expressly allows.

The SC distinguished between the determination of foreign tax and the method of computation. The identification of the foreign tax is governed by FTC Regulation 6(1), whereas the calculation of the credit falls under FTC Regulation 6(3). The method of the computation does not alter the nature of the tax, presumed or otherwise.

The pooling basis does not restrict the availability of the FTC as it is simply a way of aggregating foreign-sourced income for calculation purposes. It does not impose substantive limitations on the foreign tax that may be taken into account for calculation purposes.

The SC pointed out that if the FTC Regulations do not exclude the presumed foreign tax, the MRA and ARC approach effectively introduced a rule that does not exist.

Furthermore, the SC stated that FTC Regulation 8, regarding evidence of foreign taxes suffered, does not determine how the tax credit under the pooling mechanism should be calculated.

Crucially, the SC accepted that the FTC Regulations and, in particular, the pooling provisions, contained elements of ambiguity. Nonetheless, the SC ruled that in matters of uncertainty, the interpretation should favor the taxpayer.

Observations

The MRA incorrectly concluded that the source basis is mandatory if a qualified corporation computes its foreign tax in a given year by applying both the presumed foreign tax and tax suffered.

At a basic level, the MRA did not note that a foreign tax is always triggered by income and is not dependent on the tax treatment applied in the country of residence.

The judgment confirms the view that the establishment of the foreign tax under the presumed foreign tax methodology is on par with a foreign tax charged or spared, so that the application of the presumed foreign tax is not limited in the context of the pooling basis.

It remains to be seen whether the MRA will change its interpretation on the appropriate methodology for computing the presumed amount of foreign tax. The right to tax rests with the country of source in all cases so that the tax base is determined by the country of source and not Mauritius, the country of residence. For instance, in the context of dividend income, tax base should be computed on a gross basis; computing it on a net basis changes the underlying character of the presumed foreign tax into a presumed FTC.

Qualified corporations will not be able to submit any amended tax returns based on the SC's ruling because the year ended 30 June 2021 was the last year the presumed foreign tax applied.

Qualified corporations that have not submitted their previous tax returns should consider this judgment for any period up to 30 June 2021.

It remains to be seen whether the MRA will appeal to the Judicial Committee of the Privy Council.

Conclusion

The SC's decision does not expand the law. It simply applies the law as written.

In particular, it confirms that:

1. The FTC Regulations must be applied as an integrated framework.

2. The pooling method does not impose restrictions if a qualified corporation has applied the presumed foreign tax for any of its foreign-source income.
3. Statutory relief must be granted as written in the law and cannot be withheld based on an interpretation of the law, unless the law expressly provides for this result.

This decision reflects a relatively straightforward exercise that rests on the nature of the presumed foreign tax. Applying the presumed foreign tax is not subject to any qualifications, and its interaction with the pooling basis was not subject any intended restrictions.

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