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Judgment of The Supreme Court of Mauritius

UPL CORPORATION LTD
v
THE REVENUE TRIBUNAL & ANOR - 2026 SCJ 161

On 16 April 2026, The Supreme Court of Mauritius delivered its judgment in UPL Corporation Ltd v The Revenue Tribunal & Anor, bringing long-awaited clarity to the operation of the foreign tax credit ("FTC") mechanism.

The case has its origins in the years of assessment 2013 and 2016/2017, following assessments issued by the Mauritius Revenue Authority ("MRA") and a subsequent ruling of the Assessment Review Committee ("ARC") dated 6 April 2023, which had upheld the MRA's position.

At its core, the dispute concerned whether a taxpayer applying the pooling method could combine actual foreign tax suffered with presumed tax across different income streams.

The Supreme Court overturned the ARC's (now Revenue Tribunal) position, rejecting what it described as a "fallacy" and confirming that no such restrictive interpretation exists in law.

The Issue: A Misconceived "Second Option"

UPL Corporation Ltd, a Category 1 Global Business Licence holder, derived both dividend and non-dividend foreign source income and applied the pooling method when claiming FTC.

Its approach consisted of aggregating actual foreign tax (where evidence existed) with the 80% presumed foreign tax (where evidence was not available), subject to the statutory cap of the Mauritian tax liability.

The ARC rejected this methodology on the basis that, once the pooling method is chosen, the taxpayer must treat all foreign source income as a single indistinguishable pool and, in effect, must choose between actual or presumed tax. This gave rise to the notion of a *"second option"*, requiring an additional election beyond the choice of the computational method.

Our Newsletter on the ARC's ruling issued on 6 April 2023 can be accessed here

Analysis

A critical aspect of the Supreme Court's analysis lies in its structured and integrated reading of the interaction between section 77 of the Income Tax Act 1995 and Regulations 6, 8 and 9 of the Income Tax (Foreign Tax Credit) Regulations 1996.

The Supreme Court made it clear that there is no basis in the Regulations for contending that there is a "second option" to be exercised by the taxpayer between proved and presumed tax.

The Supreme Court reiterated that the foundational rule, as reflected in Regulation 3 read with section 77, is that FTC is granted for foreign tax actually paid. This is reinforced by Regulation 8, which provides that no credit shall be allowed unless written evidence of the amount of foreign tax charged is available. Thereby establishing proof as the general requirement.

The concept of presumed tax is introduced only as a statutory exception. In particular, Regulation 8(3) provides that the amount of foreign tax shall nevertheless be conclusively presumed to be 80% of the Mauritius tax chargeable, in circumstances where such evidence is not available.

Against this backdrop, Regulation 6(1)(a) provides that the FTC shall be "the amount of foreign tax proved or presumed to have been charged on that income", while Regulation 6(3)(a) provides that, under the pooling method, the computation is made "by reference to all foreign source income".

The Supreme Court emphasised that Regulations 6(1)(a) and 6(3)(a) must be read together. Importantly, the word "or" in Regulation 6(1)(a) was not interpreted as giving rise to a mutually exclusive choice between proved and presumed tax. Rather, it reflects the evidentiary pathway open to the taxpayer depending on whether written evidence of the foreign tax is available.

When read conjunctively, they establish a single, coherent mechanism operating on an aggregated pool of foreign source income, within which the foreign tax may be either proved or presumed, depending on the availability of evidence.

In this context, the Supreme Court found no basis for treating proved and presumed tax as mutually exclusive.

Accordingly, the Supreme Court rejected the premise underlying the ARC's reasoning, holding that the notion of a "second option" is misconceived. The distinction between proved and presumed tax does not give rise to an additional choice but rather reflects the evidentiary position of the taxpayer.

By reference to academic authority, including the work of Professor Klaus Vogel, the Supreme Court underscored that the FTC regime must be interpreted purposively, as a mechanism designed to ensure neutrality in cross-border taxation. Any interpretation that artificially restricts the availability of credit would undermine this objective.

The Supreme Court allowed the appeal of UPL Corporation Ltd, quashing ARC's ruling.

This judgment confirms that:

- There is no requirement for a taxpayer to elect between actual and presumed tax when claiming FTC;
- The distinction between the two is purely evidentiary; and
- Under the pooling method, a taxpayer is entitled to rely on a combination of proved and presumed foreign tax across different income streams.

Concluding remarks

The Supreme Court's judgment in UPL Corporation Ltd marks an important correction of an overly restrictive interpretation of the law.

By rejecting the "second option" theory and identifying the fallacy in the ARC's reasoning, the Supreme Court has reaffirmed that the FTC regime operates as a single, integrated mechanism, where evidentiary rules determine the nature of the credit but do not impose artificial limitations on its availability.

The judgment restores alignment between the technical provisions of the law and its underlying purpose, which is the effective elimination of double taxation. In doing so, it strengthens the integrity and predictability of the Mauritian tax framework, an essential element in sustaining its position as an international financial centre.

It is, however, important to note that the 80% presumed foreign tax credit is no longer available under the current tax regime. Notwithstanding its repeal, this judgment remains highly relevant for ongoing tax audits and disputes relating to prior years of assessment.

Taxpayers with open assessments for years preceding the regime change should carefully review their FTC positions in light of this judgment and consider whether previously challenged positions may now be sustainable.

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CONTACT US

Please contact us if you would like to discuss how this judgment may impact your historical positions or ongoing matters. We would be pleased to assist with reviewing your FTC positions, assessing potential exposure in ongoing tax audits, and advising on any remedial or optimisation steps in light of this judgment.

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