

# Tax Alert

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## Supreme Court Judgement in Favour of Taxpayer on Pooling of Foreign Tax Credit

### Overview

- The Supreme Court of Mauritius has ruled in favour of the taxpayer on the interpretation of the pooling rules for foreign tax credit (FTC) under the Income Tax (Foreign Tax Credit) Regulations 1996.
- The judgement provides important clarification on whether actual foreign tax and presumed foreign tax may be aggregated when the pooling method is applied.

### Summary of the case

- UPL Corporation Ltd (“**UPL**” or “**the taxpayer**”) holds a Global Business Licence (“**GBL**”) and derives foreign income from two sources, namely dividend income and non-dividend income.
- For the years of assessment 2013 and 2016/2017, UPL applied the pooling basis under the FTC Regulations and aggregated:
  - actual foreign tax paid on dividend income, and
  - 80% presumed foreign tax on non-dividend income.
- The Mauritius Revenue Authority (“**MRA**”) denied this treatment, arguing that under the pooling basis, the foreign tax claim must be based on either actual foreign tax or presumed foreign tax, but not both.
- UPL appealed to the Assessment Review Committee (“**ARC**”), now the Revenue Tribunal). The ARC upheld the MRA’s view, holding that under the pooling basis, all foreign income should be treated as a single aggregate and subject to either proved tax or presumed tax, but not a combination of both.
- The taxpayer disagreed with the ARC’s decision and appealed to the Supreme Court of Mauritius (“**SC**”), which overturned that decision and held that the FTC Regulations do not clearly prevent the combination of actual and presumed foreign tax under the pooling method.

### Key takeaways from the SC’s judgement

- Under the pooling method, foreign tax may be calculated by combining all foreign income, subject to the overall limit that the foreign tax credit cannot exceed the Mauritius tax payable.
- The SC confirmed that, where the law is unclear, it must be interpreted in favour of the taxpayer and that the rules do not require a taxpayer to choose exclusively between actual and presumed foreign tax when applying the pooling method.

## Impact of the SC's judgement on your business

- This judgement provides clarity on how the pooling method was intended to operate under the former foreign tax credit regime. While the 80% presumed foreign tax credit is no longer applicable and historical years may be closed for audit, the decision is important in confirming that tax provisions should not be applied more restrictively than what is clearly stated in the law.

Should you require any assistance, do not hesitate to contact us.

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