

Double Taxation Convention (Italy) (Amendment) Regulations 2011

GN No. 116 of 2011

THE INCOME TAX ACT

Regulations made by the Minister under section 76 of the Income Tax Act

1. These regulations may be cited as the **Double Taxation Convention (Italy) (Amendment) Regulations 2011**.

2. In these regulations -

"principal regulations" means the Double Taxation Convention (Italy) Regulations 1990;

"Protocol" means the Protocol amending the Convention between the Government of Mauritius and the Government of the Republic of Italy for the Avoidance of Double Taxation with respect to Taxes on Income and for the Prevention of Fiscal Evasion, signed at Port Louis on 9 December 2010, and set out in the Schedule to these regulations.

3. Regulation 2 of the principal regulations is amended in the definition of Convention by deleting the words "in the Schedule to these regulations" and replacing them by the words "in the First Schedule as amended by the Protocol set out in the Second Schedule to these regulations".

4. The principal regulations are amended -

(a) by renumbering the Schedule as the First Schedule;

(b) by adding, immediately after the First Schedule, the Schedule to these regulations.

5. The Protocol shall come into operation on such date as specified by the Minister in a notice published in the Government Gazette.

Made by the Minister on 12 May 2011.

SCHEDULE

[Regulation 4]

SECOND SCHEDULE

[Regulation 2]

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FOR THE PREVENTION OF FISCAL EVASION

The Government of the Republic of Mauritius and the Government of the Italian Republic, desiring to conclude a Protocol to amend the Convention between the Government of Mauritius and the Government of the Republic of Italy for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion, with Protocol, signed at Port Louis on the 9th of March 1990 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Paragraph 3 of Article 2 "Taxes Covered" shall be deleted and replaced by the following paragraph -

"3. The existing taxes to which this Convention shall apply are, in particular:

(a) in the case of Mauritius, the income tax;

(hereinafter referred to as "Mauritius tax");

(b) in the case of Italy:

(i) the personal income tax (l'imposta sul reddito delle persone fisiche);

(ii) the corporate income tax (l'imposta sul reddito delle società);

- (iii) the regional tax on productive activities (l'imposta regionale sulle attività produttive);

whether or not they are collected by withholding at source;

(hereinafter referred to as "Italian tax").

ARTICLE II

Paragraph 1 of Article 3 "*General definitions*" shall be amended as follows:

- (i) by deleting subparagraph (b) and replacing it by the following subparagraph -

- (b) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designed as an area within which Italy, in compliance with its legislation and in conformity with the international law may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;

- (ii) by deleting subparagraph (i) and replacing it by the following subparagraph -

- "(i) the term "competent authority" means -

- (1) in the case of Mauritius, the Minister to whom the responsibility for the subject of finance is assigned or his authorized representative;

- (2) in the case of Italy, the Ministry of Economy and Finance."

ARTICLE III

Article 9 "*Associated enterprises*" shall be amended by adding the following new paragraph, the existing paragraph being numbered paragraph 1:

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly, profits on which an enterprise of the other Contracting

State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. Any such adjustment shall be made only in accordance with the mutual agreement procedure provided for by Article 25 of this Convention.

ARTICLE IV

1. Paragraphs.2 and 3 of Article 23 "*Elimination of double taxation*" shall be amended as follows:

- "2. In the case of Italy:

If a resident of Italy owns items of income which are taxable in Mauritius, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such case, Italy shall deduct from the taxes so calculated the income tax paid in Mauritius but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

The tax paid in Mauritius for which deduction is granted, is only the pro rata amount corresponding to the foreign income which is included in the aggregate income.

However, no deduction shall be granted if the item of income is subjected in Italy to a substitute tax or to a final withholding tax, or to substitute taxation at the same rate as the final withholding tax, also by request of the recipient, in accordance with Italian law.

3. In the case of Mauritius:

Where a resident of Mauritius derives items of income which are taxable in Italy, Mauritius may, in determining the Mauritius tax specified in Article 2 of this Convention, include in the basis upon which Mauritius tax is imposed, those

items of income, unless specific provisions of this Convention otherwise provide.

In such case the resident of Mauritius will be entitled to a tax credit corresponding to the amount of the Italian tax levied. The tax credit shall not however exceed the amount of Mauritius tax attributable to the income concerned."

2. Paragraph 4 of Article 23 shall be deleted.

ARTICLE V

Article 26 "*Exchange of information*" shall be deleted and replaced by the following article –

ARTICLE 26

EXCHANGE OF INFORMATION

- "1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political or administrative subdivisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement as well as to prevent fiscal evasion and tax avoidance. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3, but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3, be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE VI

Each Contracting State shall notify to the other the completion of the procedures required by its domestic law for the entry into force of this Protocol. This Protocol shall enter into force on the date of the receipt of the later of these notifications and its provisions shall thereupon have effect in both States.

This Protocol shall form an integral part of the Convention and shall remain in force as long as the Convention remains in force.

In Witness whereof the undersigned being duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Port Louis this 9th day of December 2010 in the Italian and English languages, both texts being equally authoritative.

For the Government of
the Republic of Mauritius

Hon. Pravind Kumar JUGNAUTH

*Vice-Prime Minister, Minister of Finance
and Economic Development*

For the Government of
the Italian Republic

H. E. Elio MENZIONE

Ambassador
