

## Tax treatment of Losses under the Mauritian Income Tax Act 1995

The aim of this document is to allow taxpayers to gain a better insight on losses from a tax perspective, as construed under the Mauritian Income Tax Act 1995 (ITA).

Losses can be defined as the amount of the deficit where the allowable deductions exceed the gross income in an income year.

The tax legislation encompasses relevant provisions on the use of losses for both individuals and companies.

### Individuals

Section 20 of the Mauritian ITA 1995 allows losses incurred by an individual to be set off against gross income derived from any business, any rent or other income from property, any interest income, or any other income derived from any other sources. Notwithstanding the same, the law does not permit losses to be set off against gross income in the form of emoluments or remunerations.

Any excess loss can be carried forward for set-off against income derived in the 5 succeeding income years. There is no time limit however for loss attributable to annual allowance in respect of capital expenditure incurred after 1 July 2006.

### Companies

Section 59 of the Mauritian ITA 1995 stipulates the applicable provisions for companies which have incurred losses in a particular income year. Companies may deduct the losses incurred against their net income for that income year.

Any unrelieved losses may be carried forward for a maximum of 5 succeeding years. There is no time limit whatsoever in the following exceptional cases:

- where the loss is attributable to annual allowance in respect of capital expenditure incurred on or after 1 July 2006;
- where the loss is attributable to expenditure incurred on deep ocean water air conditioning, water desalination plant or research and development.

We should be mindful that in accordance with the provisions of the Income Tax Act 1995, companies are not authorised to carry forward their tax losses under specific circumstances, as described hereunder.

## *I. Change in shareholding*

A change in shareholding would restrict the carry forward of tax losses by companies. As such, if a company has undergone a change in its shareholding of more than 50%, it will not be allowed to carry forward its tax losses brought forward from the previous income year. In other words, the tax losses brought forward shall be deemed to have been lapsed. It is to be emphasized that the change in shareholding refers specifically to the change in the ultimate beneficial ownership of a company.

## *II. Transfer of loss on takeover or merger*

The tax legislation provides for some exceptions in cases of takeovers or mergers.

There are four specific instances where unrelieved losses can be transferred to acquirers following a change in shareholding by way of takeover or merger, as outlined below:

- a. A company takes another company engaged in manufacturing activities;
- b. Two or more companies engaged in manufacturing activities merge into one company;
- c. A company takes over, or acquires the whole or part of the undertaking of another company which is deemed to be in the public interest as per the Minister;
- d. A manufacturing company where the shareholding has changed by more than 50% or a company facing financial difficulties which is taken over by another shareholder.

The above transfer of losses on takeover or merger are subject to relevant terms and conditions as may be imposed by the Minister, for instance, to safeguard employment. On that note, if more than 50% of employees are made redundant within 3 years of a merger or takeover, the losses carried forward by the acquirer shall be withdrawn. Such reservation of the law aims at preserving jobs during organizational restructuring.

The unrelieved loss is deemed to be incurred by the acquirer in the income year in which the loss is transferred and shall be available for set-off against the net income of the acquirer.

## *III. Penalty for Loss overclaimed*

Taxpayers should remain cautious whenever losses are used for set-off against net income. They should be cognizant of the above provisions of the law and ensure that any claim made for loss relief is fully justified since a penalty of 5% is applicable on any loss overclaimed in a tax return in respect of a particular income year. Consequently, the amount of loss carried forward to succeeding income years shall be reduced after the penalty is imputed.

## Tax Ruling

The Mauritius Revenue Authority (MRA) has issued several tax rulings based on various business contexts which shed light on the application of the provisions on losses. Although the tax rulings are not binding on taxpayers, they serve to guide taxpayers encountering similar situations. The website of the MRA may be consulted for the rulings, some of which are listed below:

- TR 24
- TR 37
- TR 49
- TR 60
- TR 110
- TR 173

The above rulings are available on the website of the MRA: [www.mra.mu](http://www.mra.mu) (Media Centre/Tax Rulings)

## Recent ruling issued by the Assessment Review Committee (ARC)

A recent decision has been provided by the ARC in the case of Top FM Ltd (the applicant) v/s the Director-General (DG) of the MRA (the respondent). The ARC adjudicated that the applicant was eligible to claim the losses on transfer solely as per the provisions relating to change in shareholding, as disclosed under item I above, which were more appropriate. It was further established that the amalgamation did not result in any change of ultimate beneficial ownership of TOP FM Ltd.

For more detailed information on the decision/ruling of the ARC on the above case, you may access the website of the ARC (<https://arc.govmu.org>).

We may infer that the interpretation of law regarding the provisions for transfer of loss on merger or take-over would be limited to the specific instances only.

It is interesting to note that any decision of the ARC is not binding, albeit same may serve as a reference. Conversely, a judgement delivered by the Supreme Court of Mauritius, often referred to as a case law, is binding and becomes a "Judicial precedent", that acts as a guideline to decide future cases based on similar facts.

## Illustration

Simple illustrations have been laid down below to shed light on the mechanism of Losses.

## Particulars of Company X

<u>31 December 2022</u>	<u>USD</u>
Taxable gross income	300,000
Allowable expenditure	400,000
Loss for the year	(100,000)
Losses brought forward from previous years:	(455,000)
31 December 2016 – USD 50,000 *	
31 December 2017 – USD 100,000	
31 December 2018 – USD 60,000	
31 December 2019 – USD 80,000	
31 December 2020 – USD 75,000	
31 December 2021 – USD 90,000	

(i) Carry forward of losses for 5 years

<u>Tax calculation for 31 December 2022</u>	<u>USD</u>
Loss for the year	(100,000)
Loss brought forward from previous years	(455,000)
Loss lapsed during the year	50,000 *
Loss carried forward	(505,000)

- Loss for the year ended 31 December 2016 has been lapsed after 5 years.

(ii) Change in shareholding

Same situation as in (i) above except that at the beginning of the year 2022, there has been a reorganisation within the group. The ultimate beneficial owner, Company Z, has sold 51% of its stake in Company Y to Company AB. Company Y is the direct shareholder of Company X.

In light of the change in the shareholding of more than 50%, Company X will not be entitled to carry forward its losses from previous years as the new ultimate beneficial owner will be Company AB with a majority of shareholding. The impact on the losses is as follows:

<u>Tax calculation for 31 December 2022</u>	<u>USD</u>
Loss for the year	(100,000)
Loss brought forward from previous years	(455,000)
Loss lapsed during the year	455,000
Loss carried forward	(100,000)

## Take-Aways

The key take-aways are that companies should maintain a proper record for tax losses and ascertain that the time limit of 5 years is respected insofar as applicable to avoid inappropriate claim for losses in their tax returns leading to unnecessary penalties. In case a company envisages any change in shareholding or reorganisation in terms of a take-over or merger, the tax implications for losses should be carefully examined to achieve the most efficient outcome.

Get in touch with us

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