



Global Business Tax Alert Sharp Insights

The Government of India (GOI) has issued a notification for completing the procedures for the Protocol to India-Mauritius Double Taxation Avoidance Agreement to enter into force, as required by the laws of the respective countries. The protocol shall come into force from 19 July 2016.

Issue no:
GBTA/43/2016

In this issue:
[Background](#)
[Conclusion](#)
[Do you know about Dbriefs?](#)
[Contacts](#)

Background

The Central Board of Taxes (CBDT) had issued a Press Release dated 10 May 2016 on the protocol for amendment of the Double Taxation Avoidance Agreement (DTAA) with respect to taxes on income and capital gains between India and Mauritius which was signed by both countries on the said date

The said Protocol comes into effect only after both the countries notify each other on completion of the procedures required by their respective laws for bringing the Protocol into force. The GOI has now issued a Notification on the completion of the procedures for the Protocol to enter into force with effect from 19 July 2016.

The Protocol shall, accordingly, enter into force from 19 July 2016.

Key Highlights of the Notification

1. Service Permanent Establishment (PE)

The protocol has introduced the Service PE clause in the DTAA between India and Mauritius. Under the said clause, a PE shall include furnishing of services in a contracting state by an enterprise through employees or other personnel if such activities continue for a period/ periods aggregating more than 90 days within any 12 months period.

2. Interest

- Interest arising in India and paid to a resident of Mauritius may be taxed in India, but the tax cannot exceed 7.5% of the gross amount of interest if the beneficial owner of the interest is a resident of Mauritius. This amendment shall also apply in vice versa case where interest is paid from Mauritius to India.
- Interest earned by a bank carrying on bona fide banking business in a State from the resident of other state continues to be exempt, though only if such interest arises from debt claims existing on or before 31 March 2017.

3. Fees for Technical Services (FTS)

- The FTS article introduced by the protocol is largely on similar lines as in various other DTAA's entered into by India with other countries.
- It gives the source state a right to tax FTS and provides that such tax cannot exceed 10% of the gross amount of FTS

4. Source-based taxation of capital gains on shares

- With this protocol, India gets taxation rights on capital gains arising from alienation of shares acquired on or after 1 April 2017 in a company which is resident in India. Further, protection / grandfathering to investments in shares acquired before 1 April 2017 has also been provided.

- In respect of such capital gains arising during the transition period from 1 April 2017 to 31 March 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfilment of the conditions in the Limitation of Benefits ('LoB') Article.
- Taxation in India at full domestic capital gains tax rate will be applicable for capital gains arising from April 1, 2019 onwards.

5. Limitation of Benefits (LOB)

- A LOB article has been introduced which provides that a resident of a state shall not be entitled to the benefits of 50% of the tax rate applicable in the transition period (1 April 2017 to 31 March 31 2019) if its affairs were arranged with the primary purpose to take advantage of such benefits
- A shell/conduit company has been defined to mean any legal entity with negligible or nil business operations or with no real and continuous business activities carried out in that state. Such shell/conduit claiming to be a resident, shall not be entitled to benefits of reduced capital gains tax rate
- A resident of the state is deemed to be a shell/conduit company, if its expenditure on operations in that state is less than INR 2,700,000 (Mauritian Rupees 1,500,000) in the immediately preceding 12 months from the date the gains arise. Such resident is deemed not to be a shell/conduit company if it is listed on the recognised stock exchange of the state or its expenditure on operation is equal to or more than the amounts specified above.

6. Other Income

The existing tax treaty gives the right to the resident state to tax other income. However, the protocol now provides that other income of a resident of a state may also be taxed in the source state.

7. Exchange of Information and assistance in the collection of taxes

The protocol has replaced the existing article on "Exchange of Information" (EOI) which is as per International Standards and a new article on "Assistance in the collection of taxes" has been introduced.

8. Effective Date in India

- The provisions of article dealing with Service PE, Interest, FTS, LOB and other Income shall be effective in India in respect of income derived in any fiscal year beginning on or after 1 April 2017.
- The provisions of capital gains shall have effect from financial year 2017-18 (starting 1 April 2017) and subsequent years.

- The provisions of EOI and assistance in the collection of taxes shall have effect from the date of entry into force of the protocol i.e. 19 July 2016.

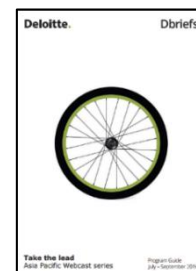
Conclusion

The amendments, made in the India Mauritius DTAA through this protocol, are in line with India's commitment to the base erosion and profit shifting (BEPS) initiative and strong intent to curb the menace of double non-taxation and long standing issues of treaty abuse. One big positive is that there will be no retroactive impact as investments made prior to April 1, 2017 have been grandfathered.

The protocol may have ramifications, for investments into India from Singapore, as the benefits of residence based-taxation of capital gains, on sale of shares under the India-Singapore DTAA, are linked to the India-Mauritius DTAA. While treaty renegotiation between India and Cyprus has already been finalized recently, there are media reports about possible renegotiation between the Government of India and Singapore and with the Netherlands.

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report

Contacts

Ahmedabad

19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

Bengal Intelligent Park Building
Alpha, 1st floor, Block EP and
GP Sector V, Salt Lake
Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material is for internal distribution and use only among personnel of Deloitte Touche Tohmatsu Limited, its member firms, and its and their affiliates. The recipient is strictly prohibited from further circulation of this material. Any breach of this requirement may invite disciplinary action (which may include dismissal) and/or prosecution. Deloitte Touche Tohmatsu Limited, its member firms, and its and their affiliates shall not be responsible for any loss whatsoever sustained by any person who relies on this material.

© 2016 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited