



## Tax alert: Protocol amending India-Mauritius tax treaty

**15 April 2024**

The Protocol to the India-Mauritius tax treaty amends the preamble and introduces the principal purpose test to the India-Mauritius tax treaty.

### **Background:**

- A protocol<sup>1</sup> dated 7 March 2024 has been signed between the Government of India and Government of Mauritius ('Protocol'), amending the India-Mauritius tax treaty.
- The Protocol contains **three Articles**:
  - (i) Article replacing the existing Preamble of the India-Mauritius tax treaty;
  - (ii) New Article 27B (relating to Entitlement to Benefits); and;
  - (iii) Date of entry into force of the Protocol

The relevant extracts of the Protocol are as per **Annexure**.

- The government, on its social media handle<sup>2</sup>, has mentioned that *"Some concerns have been raised on the India Mauritius DTAA amended recently.*

*In this context, it is clarified that the concerns /queries are premature at the moment since the Protocol is yet to be ratified and notified u/s 90 of the Income-tax Act, 1961.*

*As and when the Protocol comes into force, queries, if any, will be addressed, wherever necessary."*

### **Comments:**

India adopted the Multilateral Convention (MLI) in 2019 with a view to implement tax treaty related measures to prevent Base Erosion and Profit Shifting. This allowed several tax treaties to be amended based on adoption of specified MLI positions without the need for bilateral treaty negotiations including the introduction of the Principal Purpose Test (PPT), to prevent treaty abuse. The India-Mauritius tax treaty had not been covered under MLI provisions and has had bilateral negotiations for amendments.

The amendments to the India-Mauritius tax treaty, vide this Protocol:

- Align it with the proposal of the OECD<sup>3</sup> on the BEPS minimum standards.

<sup>1</sup> As per the Protocol published on the Ministry of External Affairs website: <https://www.mea.gov.in/TreatyDetail.htm?4377>

<sup>2</sup> <https://twitter.com/IncomeTaxIndia/status/1778804751993618707>

<sup>3</sup> Organization for Economic Co-operation and Development

- Introduce the Principal Purpose Test (PPT) to prevent treaty abuse, based on which the tax treaty benefits could be denied if one of the principal purposes of undertaking a transaction was to obtain treaty benefits.

One may need to evaluate:

- Whether the Protocol, once notified, would apply prospectively or retrospectively?
- The impact of the Protocol on the grandfathering benefit provided for capital gains exemption on sale of shares in an Indian company (acquired up to 31 March 2017).

One may wait for the notification of the Protocol in the official gazette, its date of entry into force and the clarifications (if any) which may be issued by the government.

## **Annexure:**

The relevant extracts of the Protocol are as follows:

### **Article 1 of the Protocol to the India-Mauritius tax treaty**

- Article 1 of the Protocol replaces the existing Preamble of the India-Mauritius tax treaty as follows:

*"The Government of the Republic of India and the Government of the Republic Mauritius*

*Intending to eliminate double taxation with respect to the taxes covered by this Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third jurisdictions),*

*Have agreed as follows:"*

### **Article 2 of the Protocol to the India-Mauritius tax treaty**

- New Article 27B relating to 'Entitlement to Benefits':

*"Article 27B-ENTITLEMENT TO BENEFITS:*

*Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention."*

### **Article 3 of the Protocol to the India-Mauritius tax treaty**

- Date of entry into force of the Protocol:

*"Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications.*

*The provisions of this Protocol shall have effect from the date of entry into force of the Protocol, without regard to the date on which the taxes are levied or the taxable years to which the taxes relate."*

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