C&P CHANDRAWAT & PARTNERS LAW FIRM

India-Mauritius

DOUBLE TAXATION AVOIDANCE AGREEMENT

A guide to tax agreement between India and Mauritius to curb practice of double taxation.

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Introduction

India and Mauritius have had diplomatic relations since 1948 i.e. even before Mauritius got its independence. Both the countries being former British Colonies share a similar history, culture, language, and shared water boundary of the Indian Ocean. Since 2005, India has been a major trading partner of Mauritius and exporter of goods and services

India and Mauritius have very close economic ties and are signatories bilateral agreements and MOUs for bettering the flow of trade and commerce between the two nations. In 2021, India and Mauritius signed a Comprehensive Economic Cooperation and Partnership Agreement which would ease the trade barriers, sanitary and phyto-sanitary measures, dispute settlement, etc.

Flourishing trade and economic relations between India and Mauritius leads to a huge flow of taxable capital between the two countries. To avoid dual taxation of the capital flowing between them, India and Mauritius signed a Double Taxation Avoidance Agreement in 1982. The DTAA would allow individuals from contracting states to avoid paying taxes in both countries and the tax would be levied in accordance with the agreement.

Benefits of DTAA

- The agreement is beneficial for trade and commerce flowing between the two nations. It would save tax at one instance when levied at another.
- Lower TDS rates which can soar upto 40% in the absence of DTAA.
- Lower rate of Dividend Distribution Tax (DDT), which is a tax levied on companies paying dividends to individuals. This tax is levied apart from the corporate income tax. India has withdrawn the provision for levying DDT in its recent tax reforms.
- DTAA covers various sources of income thus providing relief to . The treaty is applicable towards income tax (including surcharge) and surtax (imposed under Companies (Profit) Act 1964) in India and income tax in Mauritius.
- Permanent Establishment (PE) would include fixed PE, construction PE, service PE and agency PE. There are certain exemptions from the PE such as facilities used solely for storage, maintenance, display of goods and merchandise, etc.
- Profits incurred from the businesses can be allowed for deduction in case the profits are attributable to PE in the source country.
- India-Mauritius DTAA has been amended to ensure that none of the countries suffer tax evasion under the guise of availing DTAA benefits.
- The DTAA enables the individuals and the companies subjected to dual taxation to claim relief through any of the two methods i.e. Foreign Tax Credit and Tax Exemption.

Taxes Covered Under DTAA

INDIA

- Income Tax including the surcharge.
- Surtax imposed under Companies (Profit) Surtax Act, 1964.

MAURITIUS

- Income Tax

Sources of Incomes Covered Under DTAA

- Income from Immovable Property
- Business Profits
- Shipping and Air Transport
- Associated Enterprise
- Dividends
- Interest
- Royalties
- Capital Gains
- Independent Personal Services
- Dependent Personal Services
- Director's Fee
- Artistes and Athletes
- Government Functions
- Non-Government Pension and Annuities

Exempt Sources

- Students and Apprentices
- Professors, Teachers, and Research scholars
- Other sources

Tax Rates Under India-Mauritius DTAA

Dividend	Interest	Royalties	Technical Services
• 5%, when at least 10% of the capital of the company paying dividend are directly held by the recipient company. • 15%, in all other cases.	The tax rate for income through any kind of interest is 7.5%.	The tax rate for royalties under the India-Mauritius DTAA is 15%.	The tax rate for services under India-Mauritius DTAA is 10%.

Destination of Levy of Tax

Type of Income	Destination of tax levy
Immovable Property	State where the property is situated
Profits from Business	State where the business is carried out
Shipping and Air Transport	State where the enterprise operates
Associated Enterprise	State where the enterprise operates
Dividends	Resident State
Interests	Resident State
Royalty Fees	Resident State
Capital Gain	Immovable Property - State where the property is situated Movable Property – State where the capital gain is made
Independent Personal Service	Resident State
Dependent Personal Service	Resident State
Director's Fees	State where the company paying the fees is situated
Artistes and Athletes	State where the services are rendered
Non-Government Pension and Annuity	Resident State
Government Functions	State where the government functions are carried out
Payment to Students and Apprentices	Resident State(Exempt in source state)
Payment to Professors, Teachers, and Researchers	Resident State (Exempt in source state)

Process/Requirement for Claiming DTAA Benefits

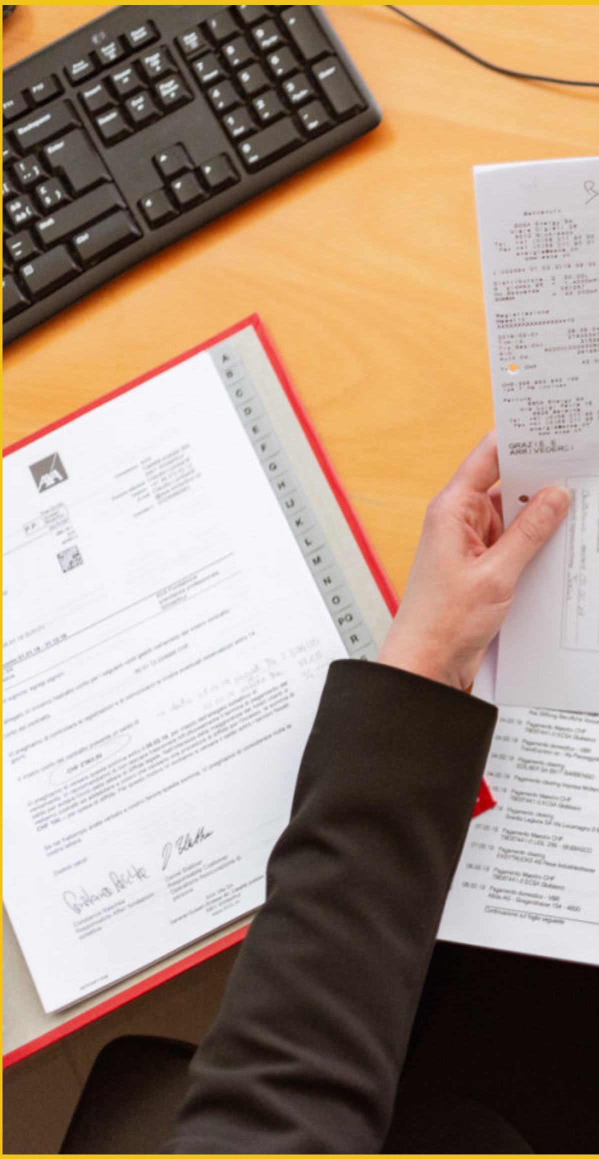
INDIA

One must fill up the following documents for claiming benefit under the DTAA-

1.Tax Residency Certificate (TRC)
2.Form 10F
3.Passport and Visa (self-attested copy)
4.Indemnity-cum-declaration
5.OCI Card (if applicable)
6.PAN Card (self-attested copy)

These documents should then be submitted by the beneficiary of DTAA to either his employer or bank or income tax department to claim the benefit of the DTAA.

The procedure for claiming benefits under DTAA is similar for individuals and the comapnies.



Process/Requirement for Claiming DTAA Benefits

MAURITIUS

Company

The tax regime of Mauritius has laid down provisions for tax exemption of Global Business License (GBL) Companies. 80% tax exemption regime was introduced by Mauritius in 2019, this exemption is available against various sources of income earned in the foreign state along with a few other sources of income.

If the companies avail the 80% tax exemption then they would not be eligible for claiming Foreign Tax Credit (FTC). For the purpose of claiming tax benefits, the GBL companies should register with Financial Services Commission (FSC) and submit necessary applications through duly licensed Management companies in a prescribed form and should be accompanied by certified supporting documents and processing fees.

The GBL company being a tax resident of Mauritius would have to apply for the tax resident certificate (TRC) to the Director-General of Mauritius Revenue Authority (MRA), it is issued within 7 days The TRC would be required to be submitted by the company in the place of carrying out business to avail tax benefits.

Individual

The tax regime in Mauritius allows individuals to claim the tax credit on the foreign income earned by them. If the tax credit is more favorable under a tax treaty then it will be allowed to apply it. For the purpose of claiming tax benefits under DTAA, the individual would also be required to obtain TRC certificate ans submit it to relevant authority for tax exmption/credit.

Amendment to India-Mauritius DTAA

India-Mauritius DTAA was designed to provide relief to the individuals and companies from double taxation when their source state was different from their resident state. DTAA enabled levy of tax at only one instance and provided relief through the means of tax exemption or foreign tax credit.

However, it was noticed by the tax authorities of India and Mauritius that the DTAA between their nations was used as cover for tax evasion. After realizing the issues, in 2017 the DTAA was amended and such provisions were adopted which would deny treaty benefits to those who try to use DTAA as a blanket for tax evasion.

HIGHLIGHT OF THE AMENDMENT TO INDIA-MAURITIUS DTAA ARE AS FOLLOWS-

- A major loophole was identified and fixed, as now revenue lost through the Mauritius Route would decrease significantly.
- The capitals gains tax will be taxed at the 50% of the prevailing domestic rate for the first two years (relevant till March, 2019). Since April 2019 the capital gains tax will be levied at full rate.
- The taxation w.r.t to capital gains would be source-based and not in resident state.
- As India-Mauritius DTAA is not affected by MLI, the amendment would provide the much needed governance on the inappropriate use of tax treaty and curb practise of tax evasion.

FAQs

01. What is Permanent Establishment (PE)?

If a company is incorporated in India and its income is taxable in India then the right to tax the global income of the said company also rests with India. Such right would arise out of the principal of "Residential Base" of taxation.

Any foreign company doing business in India is liable to be taxed in India for the sum of income received or deemed to be received, arised/accrued or deem to arise/accrue in India. This is possible due to the principal of "Source Base" of taxation.

If a foreign company has presence in India for a certain period then the income generated during its presence in India would be subjected to tax in India.

The concept of Permanent Establishment has been derived from the three scenarios discussed above. There are various kinds of PE and they have been enlisted under Article 5 of the India-Mauritius DTAA.

02. What is a TRC? What is the procedure to obtain TRC?

TRC is tax residency certificate which is a necessary document for those who want to claim benefits under DTAA. It is issued by the income tax department of the respective country where the individual was residing financial year. TRC contains the following details of the individual-

- Name of assessee.
- Status of assessee (firm, individual, company, etc.).
- Nationality (in case of an individual).
- Country or territory of incorporation (in case of others).
- Assessee's tax identification number in the country of residence or any identification number allotted by the government.
- Residential status for purpose of tax.
- Period for which certificate is available.
- Address of the applicant for the period till the certificate is applicable.

FAQs

03. What is BEPS?

Base Erosion and Profit Shifting (BEPS) is a strategy for tax evasion employed by multi-national corporations. The MNCs try to shift their income/profits to different countries with lower tax rates i.e. tax-havens.

The companies shift the income/profit of the company from the country where it is generated i.e. tax base and pay the taxes in a country with lower tax rates and thus tax on the income/profit is paid but much lesser than what it actually would have. The tax base gets eroded due to non-payment of tax against the income/profit generated in the country.

04. What is MLI?

Multilateral Instrument (MLI) is a response to the practice of BEPS which is used for tax avoidance. MLI enables the countries to come together in agreement and curb the practice of tax evasion by misusing treaties. MLIs are applied alongside the bilateral tax treaties and modify the application of the treaties. Alongside preventing tax avoidance MLIs also provides improved dispute resolution mechanism, prevent artificial avoidance of permanent establishment and neutralize the effects of hybrid mismatch arrangements.

05. Is India-Mauritius DTAA affected the MLI, which India recently ratified?

India-Mauritius DTAA has not been affected by the MLI proposed by Organisation for Economic Co-operation and Development (OECD). Unlike India, Mauritius has not ratified the MLI and thus India-Mauritius DTAA is bound by the MLI.

However, certain amendments were made in the India-Mauritius DTAA for preventing the misuse of DTAA by the foreign investors.

FAQs

06. Does DTAA provide for any dispute resolution mechanism?

Mutual Agreement Procedure (MAP) is an alternative means of dispute resolution available to an individual under DTAA for resolving any dispute related to double taxation or DTAA. This dispute resolution mechanism is in addition to the other options available under domestic law. A taxpayer can request for MAP if he has reason to believe that the tax authorities have acted in contravention to the DTAA.

In this mechanism, Chartered Accountants of both countries get involved and try to resolve the dispute through discussion and negotiation. Currently, India has two CAs who deal with MAP, they two are senior officers of the Revenue Department, Ministry of Finance.

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