

EY Tax Alert

Protocol to India-Mauritius DTAA introducing Principal Purpose Test notified

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Executive summary

This Tax Alert summarizes the Notification¹ issued by the Government of India (GOI), dated 13 October 2026, giving effect to the Protocol (2026 Protocol) signed on 7 March 2024. The 2026 Protocol amends India-Mauritius Double Taxation Avoidance Agreement (DTAA or treaty) to incorporate the Base Erosion and Profit Shifting (BEPS) related anti-abuse provisions viz. the preamble and the Principal Purpose Test (PPT), which will act as means to deny treaty benefits if one of the principal purposes of the arrangement or transaction is to obtain the DTAA benefit inconsistent with the object and purpose of the treaty.

The 2026 Protocol has entered into force and is effective from 10 August 2026.

¹F. No. 135/2026/F. No. 500/03/2012-FTD-II

Background

- The extant India-Mauritius DTAA, which entered into force on 1 April 1983 was amended by way of Protocol signed on 10 May 2016² (2016 Protocol), wherein largely the source country taxation rights were enhanced, and Limitation of Benefits (LOB) clause was included apart from the Exchange of Information (EOI) and Assistance in Collection of Taxes related provisions. One of the significant amendments was with regard to provision of taxation rights to source country with respect to capital gains on sale of shares of resident company acquired on or after 1 April 2017, while the investments made prior to 1 April 2017 were grandfathered (i.e., only the resident country has the exclusive right to tax gains on alienation of later shares).
- The 2016 Protocol did not contain the BEPS related changes. To recollect, Mauritius was a part of list of DTAA's, as notified by India, to be amended through multilateral instrument (MLI), while India was not notified by Mauritius under its list of DTAA's for MLI purposes. Accordingly, India-Mauritius DTAA was not subject to amendment in line with MLI pursuant to BEPS framework.
- In a subsequent press release dated 10 July 2017, Mauritius announced that for the DTAA's which are not covered by the MLI, Mauritius will discuss bilaterally with the respective treaty partners, including India, in order to implement the BEPS minimum standards.
- Later, on 7 March 2024³, India and Mauritius signed a protocol to amend the DTAA to better align with the Organisation for Economic Co-operation and Development (OECD) proposals on BEPS.
- Based on the text of the Protocol, a debate ensued about the potential impact of the Protocol to the past concluded transactions and income streams arising prior to the effective date of the Protocol. In this light, the tax authority on 12 April 2024 clarified⁴ that the concerns raised in this regard are premature, as the Protocol is not yet ratified and notified by Government of India (GOI) in exercise of its powers conferred under the Income Tax Laws. Further, the tax authority stated that any concerns therein will be addressed as and when the protocol comes into force.
- The ratification of Protocol by Mauritius also remained pending in view of the concerns raised by stakeholders and investors in Mauritius and India. As per the Mauritius Government, these concerns were subsequently taken up with the Indian Prime Minister, pursuant to which the

Indian Prime Minister reiterated India's continued position that no action would be taken which would undermine the benefits available to Mauritius under the DTAA. The Mauritius Government further noted that the Indian tax authority had subsequently clarified its position, which addressed the concerns raised in this regard. In view of the same, the Mauritius Cabinet, on 17 July 2026⁵, agreed to ratify the Protocol. Further, in line therewith, GOI has now notified the Protocol, which has come into effect from 10 August 2026 (referred as 2026 Protocol hereafter).

- Further, the Central Board of Direct Taxes (CBDT), vide Circular No. 1/2025 dated 21 January 2025, clarified that the PPT provisions are to be applied prospectively from (i) the date of entry into force of the treaty/amending protocol whereby PPT was introduced pursuant to bilateral negotiations; or (ii) the effective date of provisions introducing PPT into the treaty through Multilateral Instrument (MLI). Further, it also clarified that grandfathering benefit with reference to capital gains arising from transfer of shares of an Indian company by treaty residents of Mauritius, Singapore and Cyprus in respect of shares acquired prior to 1 April 2017 will be outside the purview of PPT and will be governed by the specific provisions of the respective tax treaty.

Details of 2026 Protocol:

Preamble of the DTAA replaced:

- The existing preamble to India-Mauritius DTAA has been replaced to expressly provide that the purposes of tax treaties are not limited to the elimination of double taxation, but also to prevent double non-taxation/reduced taxation including the prevention of inappropriate use of DTAA by residents of a third country.
- The phrase treaty object being "for the encouragement of mutual trade and investment" has been omitted in the revised preamble.

Principal Purpose Test introduced:

In line with the minimum standard under MLI, the Protocol includes PPT rule, wherein a benefit under the DTAA shall not be granted in respect of an item of income if it is reasonable to conclude that obtaining treaty 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

² Refer EY Tax Alert "Protocol signed on 10 May 2016 to amend the 1982 India-Mauritius tax treaty" dated 12 May 2016 and EY Tax Alert "Government of India issues notification on India-Mauritius Protocol coming into force" dated 16 August 2016 in this regard

³ Refer EY Tax Alert titled "Protocol to India-Mauritius

DTAA signed to include Principal Purpose Test" dated 15 April 2024

⁴ Source:

<https://x.com/IncomeTaxIndia/status/1778804751993618707>

⁵ Highlights of Mauritius Cabinet Meeting dated 17 July 2026

object and purpose of the relevant provisions of the treaty.

Date of entry into effect:

The 2026 Protocol has entered into force on 10 August 2026, being the date of the later of the notifications of the completion of the procedures required for giving effect to the said Protocol. Further, the 2026 Protocol is made effective on the same day (viz. 10 August 2026) without regard to the date on which the taxes are levied or the taxable years to which taxes relate.

Comments

The 2026 Protocol is in furtherance of the commitment of India and Mauritius to further develop their economic relationship and demonstrates their commitment towards combating BEPS through bilateral negotiations. It may be noted that the 2026 Protocol includes only the minimum standard on anti-abuse provisions, wherein text of the preamble has been amended and PPT has been introduced, while various other MLI provisions, such as changes to Permanent Establishment Article, treaty benefit with reference to dual resident entities etc. have not been incorporated.

The 2026 Protocol is effective from 10 August 2026 'without regard to the date on which the taxes are levied or the taxable years to which taxes relate'. Interestingly, a similar language was adopted in the provisions pertaining to Entry into Effect in the 2016 Protocol amending the India-Mauritius DTAA^[6] and the 2016 Protocol amending the India-Japan DTAA, qua the Articles pertaining to EOI and Assistance in Collection of Taxes. Generally, amendments in or addition of such procedure related articles are understood to apply not only with respect to transactions undertaken post such change but also in respect of transactions undertaken prior to such change. The debate had ensued in 2024 when the Protocol was

^[6] Refer EY Tax Alert "Protocol signed on 10 May 2016 to amend the 1982 India-Mauritius tax treaty" dated 12 May 2016

signed about a potential impact to past concluded transactions and income streams arising prior to the effective date of the Protocol. In this light, the tax authority on 12 April 2024^[7] clarified that the concerns raised in this regard were premature pending ratification of the Protocol and assured addressing the concerns after the protocol comes into force. In the meanwhile, the CBDT has in its Circular number 1/2025 dated 21 January 2025 made the aspect of prospective application explicitly clear by stating that *"For ensuring parity and uniformity in the application of the PPT provision under India's DTAA's, it is clarified that the PPT provision is intended to be applied prospectively"*. Also, the minimum standards involving preamble amendment and PPT insertion have been included in all Indian treaties prospectively whether such amendment is based on bilateral negotiations^[8] or based on MLI. Given the clear intent of providing parity and uniformity of BEPS amendments, the protocol under reference also may need to be applied prospectively.

It is also important to note that Circular 1/2025 also clarified that the grandfathering benefit available under the India-Mauritius DTAA for shares of Indian company acquired before 1 April 2017 remains outside the purview of PPT and continues to be governed by the specific treaty provisions.

Given the significance of India Mauritius treaty, with the 2026 Protocol being effective, the taxpayers impacted by the protocol are advised to evaluate its impact in addition to evaluation of domestic GAAR and other anti-avoidance doctrines.

^[7] Source: <https://x.com/IncomeTaxIndia/status/1778804751993618707>

^[8] Refer DTAA's with China, Hong Kong, Iran, Chile, etc.

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