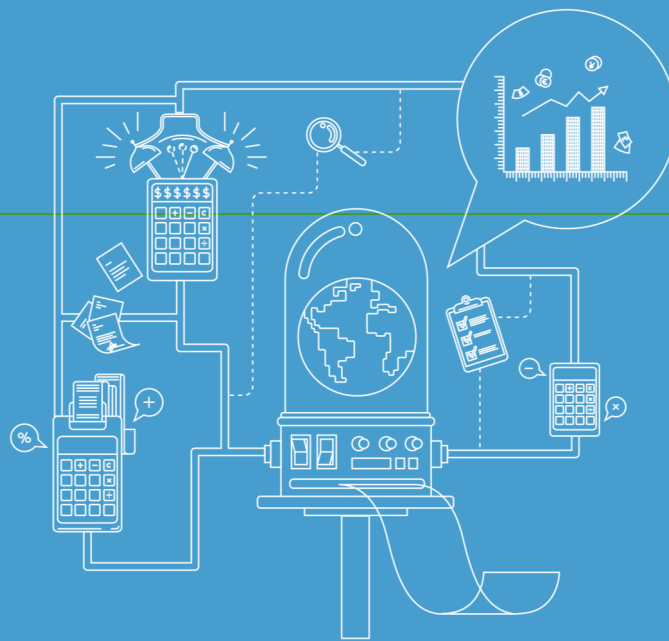


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NEWSFLASH: INDIA AND MAURITIUS SIGN PROTOCOL AMENDING THE TAX TREATY

- Capital gains on sale of shares which are acquired on or after 1 April 2017 taxable in India

The Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius was signed by both countries on 10 May 2016 at Port Louis, Mauritius. The key features of the Protocol are as under:

- i. **Prospective Change in the Taxation of Capital Gain (i.e. investments made before 1.4.2017 have been protected and will not be subject to capital gains taxation in India)**: With this Protocol, India gets taxation rights on capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from financial year 2017-18, while simultaneously protection to investments in shares acquired before 1st April, 2017 has also been provided.
- ii. **Concessional Rate of Tax on Capital gain during the period 2017-19**: In respect of capital gains arising during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfillment of the conditions in the Limitation of Benefits Article. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.
- iii. **Limitation of Benefits (LOB)**: The benefit of 50% reduction in tax rate during the transition period from 1st April, 2017 to 31st March, 2019 shall be subject to LOB Article, whereby a resident of Mauritius (including a shell / conduit company) will not be entitled to benefits of 50% reduction in tax rate, if it fails the main purpose test and bonafide business test. A resident is deemed to be a shell / conduit company, if its total expenditure on operations in Mauritius is less than Rs. 2,700,000 (Mauritian Rupees 1,500,000) in the immediately preceding 12 months.
- iv. **Source-based taxation of interest income of banks**: Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31st March, 2017. However, interest income of Mauritian resident banks in respect of debt-claims existing on or before 31st March, 2017 shall be exempt from tax in India.
- v. The Protocol also provides for updation of Exchange of Information Article as per international standard, provision for assistance in collection of taxes, source-based taxation of other income, amongst other changes.

Clarification:

- *The existing investments, i.e. investments made before 1 April 2017 have been grand-fathered and will not be subject to capital gains taxation in India.*
- *As India -Singapore tax treaty making specific reference to the India-Mauritius tax treaty (Art 6 of the protocol) provides that so long as the capital gain tax is exempt under the India-Mauritius tax treaty, the exemption shall also continue under the India-Singapore tax treaty. With the above change in the India- Mauritius tax treaty, the capital gain tax exemption currently availed under the India-Singapore tax treaty shall also be impacted. More clarity is awaited in respect of the implications on the India-Singapore tax treaty pursuant to the above amendment in the India-Mauritius tax treaty.*

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This newsflash is general in nature. In this newsflash, we have summarised the press release of Ministry of Finance, Government of India dated 10 May 2016 highlighting the significant amendments to the India –Mauritius protocol on Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analysed to ascertain applicability or otherwise of the topics covered in this newsflash. Appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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