

# India–Mauritius Tax Treaty: Implications of the 2024 Protocol for Investment Structures



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## **India–Mauritius Tax Treaty: Implications of the 2024 Protocol for Investment Structures**

On 7 March 2024, India and Mauritius signed a protocol amending their longstanding Double Taxation Avoidance Agreement (DTAA), originally concluded in 1982. The two countries share historical, cultural, and economic ties, with a significant Indian-origin population in Mauritius and a strong record of cross-border investment collaboration – factors that have long underpinned their tax and investment relationship.

While the protocol introduces stricter anti-abuse measures aligned with the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) framework, specifically BEPS Action 6, Mauritius remains a favourable jurisdiction for structuring India-bound investments relative to non-treaty jurisdictions. It continues to offer treaty certainty, reduced withholding rates, and administrative ease – factors that sustain its appeal for fund and trust vehicles. Compared with other treaty jurisdictions like Luxembourg, Mauritius imposes more explicit substance requirements, including minimum local expenditure and active business operations – which, while raising compliance standards, enhance certainty on treaty eligibility and reduce the risk of denial.

Given the significance of the India–Mauritius route for fund and trust-based investments, the developments have drawn close attention from financial and legal advisors, with India's Central Board of Direct Taxes (CBDT) clarifying in a January 2025 circular that the Principal Purpose Test (PPT) will apply prospectively, leaving prior investments unaffected.

### **Evolution of the Tax Treaty:**

Mauritius has long been a preferred jurisdiction for structuring investments into India, largely due to favourable capital gains provisions under the DTAA. Historically, Article 13

of the treaty exempted capital gains realised by a Mauritian resident from Indian taxation, facilitating significant foreign direct investment (FDI) and foreign portfolio investment (FPI) flows through Mauritian entities. This favourable treatment began to shift with the 2016 protocol, which inserted Article 13(3B), allowing India to tax gains on shares acquired on or after 1 April 2017. Although this curtailed some benefits, Mauritius remains attractive due to the absence of capital gains tax locally, administrative ease, a well-established financial ecosystem, and continued treaty access.

### Key Changes Introduced by the 2024 Protocol:

- **Revised Preamble:** The treaty preamble now explicitly states that its purpose is not only to eliminate double taxation but also to prevent opportunities for non-taxation or reduced taxation through evasion or avoidance, with avoidance encompassing arrangements lacking genuine commercial substance or legitimate economic purpose, including “treaty shopping”.
- **Article 27B – Principal Purpose Test (PPT):** Treaty benefits may be denied if a principal purpose of a transaction or arrangement was to obtain that benefit, unless aligned with the object and purpose. The PPT applies across all treaty articles and may affect dividend and interest income under Articles 10 and 11, despite these provisions not being amended. Benefits can still be preserved by demonstrating genuine commercial substance and active business presence in Mauritius, subject to Indian tax scrutiny.
- **Coexistence with Article 27A – Limitation of Benefits Clause:** Article 27A continues to apply to capital gains on shares acquired post-April 2017. It includes specific substance requirements such as a minimum annual expenditure of MUR 1.5 million in Mauritius or demonstration of active business operations. This quantifiable threshold serves as a key benchmark for establishing economic substance and securing treaty benefits. The new PPT provision under Article 27B operates as an additional safeguard and applies across all treaty articles.

### Judicial Context: The SC Lowy Case:

Although not involving Mauritius directly, the 2023 decision of the Income Tax Appellate Tribunal (ITAT) in SC Lowy P.I. (Lux) S.A.R.L. v. Assistant Commissioner of Income Tax is highly relevant. Indian tax authorities attempted to deny benefits under the India-Luxembourg DTAA by invoking the PPT. The Tribunal ruled in favour of the taxpayer, emphasising that:

- a valid Tax Residency Certificate (TRC) is prima facie evidence of treaty entitlement;
- treaty benefits cannot be denied without clear, objective evidence of treaty abuse – such as lack of substantive operations, paper-only governance, or treaty-driven structures with no commercial rationale; and,
- the PPT cannot be applied retrospectively.

Since the PPT in the India-Mauritius DTAA mirrors language from other MLI-modified treaties, this decision offers important judicial guidance on how Indian courts may interpret similar provisions going forward.

### **Strategic Readiness for Investment Funds and Trust Structures:**

Mauritius remains an advantageous jurisdiction, although the 2024 protocol raises the compliance threshold for fund and trust structures. New investments must demonstrate genuine commercial substance including economic presence, board-level control, and operational oversight in Mauritius. Crucially, obtaining treaty benefits must not be a principal purpose of the arrangement. This necessitates rigorous documentation, sound corporate governance, and a clear commercial rationale, especially where reduced withholding taxes or capital gains exemptions are sought. Mauritius continues to offer treaty-based legal certainty and administrative efficiency, not available in non-treaty jurisdictions. The 2024 protocol preserves these advantages – requiring simply that they be accessed through commercially sound and substance-rich structures.

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