

**DTOS**

**UPDATE ON MAURITIUS DOUBLE TAXATION  
AVOIDANCE AGREEMENTS (DTAAs) AS  
MODIFIED BY THE MULTILATERAL  
INSTRUMENT (MLI) OF THE OECD**

## Update on Mauritius Double Taxation Avoidance Agreements (DTAAs) as modified by the Multilateral Instrument (MLI) of the OECD

### Introduction

This article supplements the previous one titled “Impact of the Multilateral Instrument (MLI) Convention of the OECD on the Tax Treaties signed by Mauritius” published by DTOS on 20<sup>th</sup> January 2023.

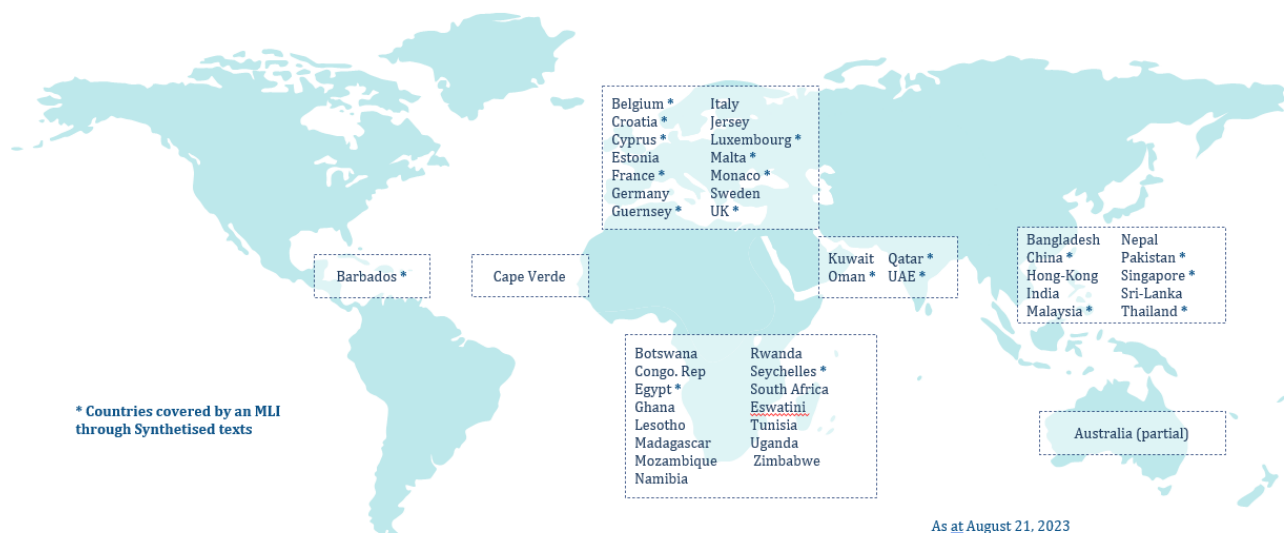
Mauritius, as a reliable jurisdiction, has a growing network of Double Taxation Avoidance Agreements (DTAAs) based on the OECD model.

As at date, the Government of the Republic of Mauritius has concluded **46 tax treaties** and a series of treaties are under negotiation. The latest jurisdiction to have signed a DTAA with Mauritius on 7<sup>th</sup> November 2022 is the Special Administrative Region (SAR) of Hong-Kong.

The series of treaties awaiting ratification, signature or being negotiated are as follows:

- ❖ **7 treaties await ratification** (awaiting the required notification regarding the entering into force of the Agreement as set out in the Article [Entry into force] of the DTAA) : Gabon, Comoros Islands, Kenya, Morocco, Nigeria, Russia and The Republic of Angola
- ❖ **5 treaties await signature** : Botswana (New), Gibraltar, Guyana, Malawi and The Gambia
- ❖ **20 treaties being negotiated** : Algeria, Burkina Faso, Canada, Cote D'Ivoire, Czech Republic, Greece, Montenegro, Republic of Sudan, Portugal, Republic of Iran, Saudi Arabia, Senegal (New), Spain, St. Kitts & Nevis, Tanzania, Vietnam, Yemen, Zambia (New), Mali and Republic of Turkey
- ❖ 5 protocols to existing treaties awaiting signature: Bangladesh, India, Jersey, Mozambique and Uganda
- ❖ 1 protocol to existing treaties being negotiated : Oman

### Mauritius Tax Treaties Network



## Treaties modified by the Multilateral Instrument (MLI)

Mauritius is a signatory to the Multilateral Convention for the Implementation of BEPS (MLI) measures, which is an instrument/convention set up by the OECD in July 2018 for making swift changes to tax treaties, so they incorporate two of the four BEPS "minimum standards"- counteracting treaty abuse (Action 6) and improving dispute resolution mechanism (Action 14) together with other means to improve the treaties. As at date, Synthetised texts have been prepared and published on the MRA website in respect of 20 of the treaties signed by Mauritius and covered by the Multilateral Instrument (MLI). Synthetised texts are in preparation for treaties with Sweden and South-Africa. Italy, Kuwait and Namibia have not yet deposited their instrument of ratification of the MLI and therefore the date of entry into effect of the MLI provisions is not yet known in respect of those treaties.

### **Preamble**

The Covered Tax Agreement (CTA) aims at eliminating double taxation without creating situations of reduced taxation or double non-taxation through tax evasion or avoidance with respect to taxes covered by DTAAAs. The Contracting Parties may also opt for a preamble language that refers to a desire to develop an economic relationship and enhance cooperation in tax matters.

### **Associated Enterprises**

The amended provisions on Associated Enterprises allow taxpayers to make corresponding adjustments to the amount of tax charged in the second State in cases where their profits have been adjusted in the first State, provided that such profits would have accrued on comparable arrangements between independent parties.

In determining such adjustments, due consideration should be given to other provisions of the DTAAAs together with any requisite consultation between the Competent Authorities.

Some existing DTAAAs with certain countries already embedded the provisions as applicable for corresponding adjustments.

Others have implemented the corresponding adjustments through the provisions of the MLI.

### **Mutual Agreement Procedure**

The revised provisions on Mutual Agreement Procedure grant taxpayers the possibility to present their case to the Competent Authority of either State within three years from the first notification of the action resulting in taxation which is not in accordance with the provisions of the DTAAAs.

The MLI allows for jurisdictions to adopt mandatory binding provisions for the resolution of tax treaty disputes. Several existing DTAAAs have been modified to include the mandatory binding arbitration provisions under the Mutual Agreement Procedure. Consequently, in instances where the Competent Authorities cannot reach a mutual agreement within two years after the case has been presented, the aggrieved taxpayers would be allowed to request in writing for arbitration proceedings to be instituted in the manner prescribed by the arbitration rules or procedures of the MLI and as agreed upon between the Competent Authorities.

The arbitration decision shall be binding upon both Contracting States save in cases of disagreement by the taxpayers, where the arbitration decision is invalidated by a final court decision of one Contracting

State or litigation is pursued on issues already resolved under mutual agreement in a court or administrative tribunal.

In addition, other procedures which underlie the arbitration proceedings such as the appointment of arbitrators, confidentiality and costs of arbitration proceedings, resolution of a case prior to the conclusion of the arbitration, agreement on a different resolution, type of arbitration process and compatibility are in accordance with the provisions set out in the MLI.

It is worth noting that Mauritius reserves the right to exclude cases dealing with anti-avoidance rules from any arbitration proceedings.

## Principal Purpose Test (PPT)

The PPT will apply to deny treaty benefits when it is reasonable to conclude, having regard to the relevant facts and circumstances, that obtaining tax benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit. The PPT would not however apply where it is established that granting of tax benefits in relevant circumstances will be in accordance with the object and purpose of the relevant provisions of the DTAAs.

## Existing Mauritian DTAAs as modified by the provisions of the MLI

	Country	Preamble	Associated Enterprises	Mutual Agreement Procedure (MAP)		Principal Purpose Test (PPT)
				Mutual Agreement	Arbitration	
1	Barbados	Yes	Yes	Yes	Yes	Yes
2	Belgium	Yes	Yes	Yes	Yes	Yes (5)
3	Croatia	Yes	No (2)	No (3)	No (4)	Yes
4	Cyprus	Yes	Yes	Yes	No (4)	Yes (5)
5	Egypt	Yes	No (2)	Yes	No (4)	Yes
6	France	Yes	Yes	Yes	Yes	Yes
7	Guernsey	Yes	No (2)	Yes	No (4)	Yes (5)
8	Luxembourg	Yes	Yes	Yes	Yes	Yes (5)
9	Malaysia	Yes (1)	Yes	Yes	No (4)	Yes
10	Malta	Yes	Yes	Yes	Yes	Yes (5)
11	Monaco	Yes	No (2)	No (3)	No (4)	Yes
12	Oman	Yes (1)	Yes	Yes	No (4)	Yes
13	Pakistan	Yes	Yes	Yes	No (4)	Yes
14	P. R. of China	Yes	No (2)	No (3)	No (4)	Yes
15	Seychelles	Yes	No (2)	Yes	No (4)	Yes (5)
16	Singapore	Yes	Yes	No (3)	Yes	Yes (5)
17	State of Qatar	Yes	Yes	Yes	No (4)	Yes
18	Thailand	Yes (1)	No (2)	No (3)	No (4)	Yes
19	United Arab Emirates	Yes	No (2)	Yes	No (4)	Yes (5)
20	United Kingdom	Yes	Yes	Yes	Yes	Yes (5)

NOTES related to the above “Existing Mauritian DTAs as modified by the provisions of the MLI” table:

## 1. Preamble

Malaysia, Oman and Thailand did not opt to include the language that refers to the desire to develop the economic relationship and enhance cooperation in tax matters under their Preamble.

## 2. Associated Enterprises

Croatia, Egypt, Guernsey, Monaco, People's Republic of China, Seychelles, Thailand and United Arab Emirates already embedded the provisions for corresponding adjustments in their DTAs. The corresponding adjustments need to be made within a timeframe of 5 years for Egypt.

## Mutual Agreement Map (MAP)

## 3. Mutual Agreement

Croatia, Monaco, People's Republic of China, Singapore and Thailand already included the relevant provisions of the MLI for mutual agreement, except that they did not opt for a case to be referred to either State.

The existing provision was maintained whereby the case should be referred to the State where the taxpayer is a resident or alternatively where he is a national.

## 4. Arbitration

Croatia, Cyprus, Egypt, Guernsey, Malaysia, Monaco, Oman, Pakistan, People's Republic of China, Seychelles, State of Qatar, Thailand and United Arab Emirates did not include any provisions for arbitration, as set out by the MLI.

## 5. Principal Purpose Test (PPT)

Under the PPT, a remedial benefit is included in the tax treaties with Belgium, Cyprus, Guernsey, Luxembourg, Malta, Seychelles, Singapore, United Arab Emirates and United Kingdom where the Competent Authority authorises either a partial or full benefit that would otherwise be denied by the PPT.

## Treaties not modified by the MLI

Treaties not covered by the MLI Convention will be amended on a bilateral basis to bring them into line with BEPS initiatives. Treaties with Estonia and Lesotho signed in 2021 and treaty with Hong Kong signed in 2022 already included the minimum standards to comply with the treaty related BEPS measures.

Based on current MLI positions or jurisdictions that have not yet signed the MLI, treaties not modified by the MLI include:

Australia\*, Bangladesh\*\*, Botswana\*\*, Cape Verde, Congo Republic, Eswatini, Germany\*\*\*, Ghana, India \*\*, Jersey \*\*, Madagascar, Mozambique \*\*, Nepal, Rwanda, Sri Lanka, Tunisia, Uganda\*\* and Zimbabwe.

\*Abridged treaty with Australia not listed by Mauritius under the MLI

\*\* Botswana New Treaty and the protocols to existing treaties with Bangladesh, India, Jersey, Mozambique and Uganda which await signature will include the minimum standards to comply with the treaty related BEPS measures.

\*\*\* The protocol amending the DTAA with Germany signed in October 2021 to make the treaty BEPS compliant is in force since 1st July 2023.

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