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India-Mauritius Protocol Seeks to Close Tax Loopholes

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On May 10, 2016, the Republic of India and the Republic of Mauritius entered into a protocol (the Protocol)[1] amending the India-Mauritius Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion (the Mauritius DTAA).[2] The stated objectives of the Protocol were to "tackle the long pending issues of treaty abuse and round tripping of funds attributed to the India-Mauritius treaty, curb revenue loss, prevent double nontaxation, streamline the flow of investment… stimulate the flow of exchange of information between India and Mauritius… improve transparency in tax matters and… help curb tax evasion and tax avoidance."[3]

The pre-Protocol Mauritius DTAA provided that, in most circumstances, investors would be taxed according to the regime of their state of residence (home state) exclusively, rather than the tax regime of the state where the income arose (the source state). This generally allowed India-focused funds to domicile in Mauritius and pay the comparatively lower Mauritius tax rates on income derived from their Indian investments. In negotiating the Protocol, Indian government authorities stated that they sought to achieve greater uniformity across all of India's bilateral tax treaties by eliminating exclusive home state taxation of capital gains income under the Mauritius DTAA and the analogous bilateral tax treaty with Singapore, which is linked to the Mauritius DTAA.[4] Among India's approximately 95 bilateral tax treaties, Mauritius, Singapore and only a small number of others provide for exclusive home state capital gains taxation.[5]

The Protocol closes these tax benefits, which have been characterized by the government of India as tax "loopholes." The elimination of these tax benefits will impact India-focused investor classes differently depending upon their strategies and investments.

One of the most significant changes brought about by the Protocol will enable the Indian government to tax income on the sale of Indian equity securities to investors that are domiciled in Mauritius and Singapore. The India short-term capital gains tax (for securities held for 36 months or less) is currently 15 percent and, in contrast, the Mauritius and Singapore short-term capital gains tax is nil.[6] By contrast, in Mauritius, Singapore, and India the long-term capital gains tax on listed equities is, in most instances, nil. Therefore, the Protocol will presumably impact funds based in Mauritius or Singapore with short-term equity strategies more than funds with long-term equity strategies.

Overview of the Mauritius DTAA

The Mauritius DTAA is intended to avoid double taxation for income derived from cross-border transactions between Indian and Mauritian investors. The treaty establishes which country's tax regime (home state or source state) will be applied to such income

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(or, in some instances, establishes that both countries' tax regimes will be applied). Different procedures under the treaty determine the applicable tax regime depending upon the nature of the income: interest; capital gains; business profits; or other income.

Prior to amendment by the Protocol, dividends and undistributed profits from the profits and income attributable to the operations of a company in its home state were to be taxed only in the investor's home state.[7] Similarly, any capital gains to an investor from the sale of property in the source state were to be taxed only by the home state.[8] Interest income to banks that arose in the source state was to be taxable only in certain taxpayers'[9] home states.[10] Any other income that was not specifically addressed in the Mauritius DTAA was covered by a catch-all provision, which provided generally that the income of an investor is taxable only in its home state.

As a general exception, the Mauritius DTAA provides that income may become taxable in the source state if the investor either carries on business or provides independent personal services from a permanent establishment in the source state.[11] The "permanent establishment" rules remain unaltered by the Protocol.

How Did the Pre-Protocol Mauritius DTAA Influence Fund Structuring?

The pre-Protocol Mauritius DTAA provided that, in most circumstances, investors would be taxed according to the regime of their home state, rather than the source state. This was intended to protect investors of either country from double taxation on income derived from their transactions with the other country. In practice, the Mauritius DTAA allowed investors that domiciled in Mauritius to avoid higher Indian taxes, including capital gains tax, and instead pay the comparatively lower (sometimes nil) Mauritius tax on income derived from investment activities in India. As indicated in the table below, Mauritius imposes substantially lower taxes than India, particularly on short-term capital gains.

Comparison of Income Tax by Source and Country[12]

	Capital Gains (Short-term)	**Capital Gains (Long-term)**[13]	**Interest Income**	**Dividends**
India[14]	15%[15]	10% (unlisted); 0% (listed)[16]	20%[17]	40%[18]
Mauritius	Nil[19]	Nil[20]	3%[21]	3%[22]
Singapore	Nil[23]	Nil[24]	15%[25]	Nil[26]
Netherlands	Nil[27]	Nil[28]	Nil[29]	15%[30]

As the table above indicates, Mauritius imposes lower taxes than comparable tax-efficient countries that have entered into DTAA agreements with India. Because the Mauritius DTAA, prior to amendment, generally provided that only one tax regime can be imposed on an investor of either state for their cross-border income, many India-focused private funds and managers have established themselves as Mauritius investors to achieve tax efficiency.

However, the "Mauritius Route" was not available to Mauritian investors that maintained a significant presence in India (a permanent establishment).[31] Therefore, investors that used the Mauritius Route diligently sought to avoid permanent establishment in India. Among other things, investors had to be cautious to avoid conducting business or management activities from within India or establishing India-based offices, branches, or other locations where business or management took place.[32] Thus, the Mauritius DTAA has incentivized India-focused managers to domicile funds outside India and avoid establishing on-site fund-management operations in India, potentially stifling the development of the fund-management industry in India.

Since the Mauritius DTAA was signed, the Mauritius Route has become the preferred method of direct foreign investment into India. More recently, many fund managers have sought to domicile in

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Singapore to obtain similar tax benefits in that jurisdiction. Like Mauritius, Singapore offers tax efficiencies to funds and fund managers (as indicated in the table above), and has entered into a bilateral tax treaty with India to avoid double taxation (the Singapore DTAA).[33] An August 1, 2005, protocol amendment to the Singapore DTAA links the Singapore DTAA to the Mauritius DTAA. Under the 2005 protocol, the capital gains provision of the Singapore DTAA, as amended, remains in force so long as the Mauritius DTAA continues to provide exclusive home state taxation.[34] The Protocol now effectively eliminates this provision of the Singapore DTAA.

How Does the Protocol Amend the Mauritius DTAA?

The Protocol amends the Mauritius DTAA to allow for source-based taxation of capital gains rather than exclusive home state taxation for all gains from the sale of shares acquired on or after April 1, 2017.[35] Capital gains from the sale of shares acquired before April 1, 2017 are grandfathered.[36] There is also a two year transition period whereby capital gains arising from April 1, 2017, until March 31, 2019, will be taxed by the source state at only 50 percent of the applicable tax rate.[37] However, this may be limited by a new "Limitation of Benefit" provision that denies the benefit of the transition period to any investor that was organized as a shell or conduit company[38] for the primary purpose of taking advantage of the benefits of the Mauritius DTAA.

The Protocol eliminated the exemption from source-state taxation of interest income to banking companies, and therefore interest income to this class of investors will also become subject to Indian source state taxation. Interest income arising from debt-claims existing on or before March 31, 2017 is grandfathered.[39] Unlike capital gains, there is no transition period; however, Indian taxation of interest income is capped at 7.5 percent.[40]

All other income not specifically discussed in the Mauritius DTAA may now be taxed in the source state, which is a direct reversal of the Mauritius DTAA catch-all.[41]

The Protocol also greatly expands the exchange of information between tax authorities. India and Mauritius agreed to exchange information to carry out the provisions of the Mauritius DTAA "or to [administer] or [enforce] domestic laws concerning taxes of every kind and description imposed by [either state] … insofar as [such taxation] is not contrary to the [Mauritius DTAA]."[42] Furthermore, neither state may refuse to exchange information on the basis that "the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person."[43]

The Protocol also includes a new provision for assistance in the collection of taxes. The new provision will require the competent authority of either state to collect taxes "in accordance with the provisions of its laws applicable to enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State."[44]

How Will the Protocol Affect India-Focused Funds?

Not all investor classes are expected to be impacted to the same degree by the Protocol changes. The Protocol will have the most immediate impact on Mauritius investors that rely upon the tax efficiencies of the Mauritius DTAA. There will be a collateral effect on Singapore investors that rely upon the tax efficiencies of the Singapore DTAA. The impact of the Protocol on these investors will depend upon the strategies and investments of these funds, as discussed below.

Because Indian taxes will apply to capital gains on securities of Indian companies that are owned by Mauritius or Singapore based funds, those funds with equity strategies will be the most immediately affected by the Protocol. The extent of the impact will depend substantially upon whether their strategies would give rise to long-term or short-term capital gains under Indian law, and whether the funds

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invest primarily in listed or unlisted shares.[45] Long-term equity funds, that hold securities for longer than 36 months, may not experience a substantial impact from the Protocol if they invest primarily in listed shares that are sold through a recognized stock exchange and the Indian Securities Transaction Tax (STT) is paid on the sales.[46] There is no tax on long-term capital gains on listed shares for which the STT was paid.[47] Accordingly, Mauritius-routed investors with long-term investment strategies are not likely to experience significant direct impacts from the Protocol.

However, long-term investors that hold unlisted shares, irrespective of how long they are held, will become subject to the current Indian long-term capital gains 10 percent tax for their unlisted shares, although some will pay only 5 percent for two years beginning April 1, 2017 unless they are prohibited by the Limitation of Benefit. Accordingly, Mauritius-routed private equity funds and venture capital funds may experience a more substantial impact from the new tax regime. Furthermore, for private equity and venture capital funds, it is not clear whether additional investments made after April 1, 2017 in a portfolio company that the fund first took a position in prior to April 1, 2017, will be grandfathered.

Funds with short-term equity strategies, such as many India-focused hedge funds, will become subject to 50 percent of India's short-term capital gains rate beginning April 1, 2017 and the full Indian short-term capital gains rate beginning April 1, 2019 unless they are prohibited by the Limitation of Benefit. Because India's current short-term capital gains tax is 20 percent and these funds are currently paying no capital gains tax, short-term equity funds may be substantially affected by the changes brought by the Protocol. The application of Indian short-term capital gains tax may also have an impact on other short-term investors, such as investors in Indian initial public offerings.

The Protocol does not address the status of derivatives, debentures, or participation notes (P-Notes), which has led to substantial confusion since the Protocol was adopted. Derivatives investors may find relief in recent statements from Indian Financial Services Secretary Hasmukh Adhia that derivatives are exempt from the Protocol.[48] According to Mr. Adhia, in most of India's bilateral treaties "derivatives are treated as part of 'other assets' and so are debt instruments. So the capital gains in such cases necessarily come from 'other assets', not equity assets."[49] Mr. Adhia also confirmed that offshore derivatives, such as P-Notes, are not affected by the Protocol. According to Mr. Adhia, "P-Notes is a separate decision. It is not linked to the treaty."[50]

P-Notes are a type of offshore derivative instrument issued by foreign institutional investors (FIIs) with shares of Indian companies as the underlying asset. P-Notes became a popular early investment for managers that sought to gain exposure to Indian equities, but wished to avoid market entry barriers such as FII registration with the Securities and Exchange Board of India (SEBI). Since 2007, SEBI has introduced regulatory changes to restrict P-Note investment while simultaneously easing restrictions on FII registration.[51]

Although these regulatory changes have caused P-Notes to decline recently in popularity, P-Note participation remains a significant source of indirect Indian equity investment, because P-Notes allow an investor to gain exposure to Indian-listed securities without registering as an FII. SEBI refers to P-Notes as offshore derivatives instruments because they are issued and sold by FIIs to investors outside India that are not known to SEBI and cannot be directly regulated by SEBI.

Based upon Mr. Adhia's statements, hedge funds that gain short-term exposure to Indian equities through P-Notes and other derivatives will not experience a new tax burden. However, Mr. Adhia's statements do not have the force of law and only reflect the policy position of the Financial Services Secretary at this time. The Indian government could reverse this position in the future and take a more aggressive position toward derivatives under the Protocol. Furthermore, Mr. Adhia's statements suggest that the

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Indian government reserves the right to invoke the General Anti-Avoidance Rule (GAAR) to determine that a particular derivative instrument or transaction was intended to avoid capital gains taxation under the treaty.[52] GAAR is an Indian anti-tax avoidance regulation intended to target transactions and structures that have been designed to avoid Indian taxes. GAAR will come into force on April 1, 2017.[53]

Accordingly, taxation of derivatives remains an open question. The Indian revenue department's position on derivatives may be clarified when the GAAR and the Protocol come into effect on April 1, 2017.

Funds that invest primarily in debt instruments may experience the least disruption. Interest income and income from the sale of debt instruments in India by Mauritius entities will become subject to Indian taxation; however, the Protocol limits that taxation to 7.5 percent.[54]

Limitation of Benefit

Investors with investments or strategies that may experience potentially higher Indian source state taxation should determine how to respond to the Protocol in a manner that will reduce their tax risk from the Protocol. In so doing, investors should be cognizant of the potential application of the Limitation of Benefit. All Mauritius entities will become immediately subject to the Limitation of Benefit rules and may face losing beneficial tax treatment immediately if they are deemed shell companies; that is, companies that exist solely for the purpose of taking advantage of the Mauritius DTAA's tax benefits.

The Limitation of Benefit provision found in the Protocol is an anti-treaty abuse mechanism. The provision denies an investor the benefit of the capital gains transition period if the investor's "affairs were arranged with the primary purpose to take advantage of the benefits [treaty]."[55] To avoid the Limitation of Benefit, a Mauritius investor must satisfy both a "primary purpose test" and a "bona fide business activities" test, and must prove that it is not a "shell company" because its Mauritian operations are more than negligible.[56] Under the Protocol, to avoid "shell company" status, a Mauritian investor must demonstrate that its total expenditure on operations in Mauritius exceeds 1.5 million rupees (approx. $43,000 USD) in the immediately preceding 12 months.[57] However, many of the terms describing a "shell company" for purposes of the Limitation of Benefit are vague and will require interpretation, for example, "no real or continuous business activities" and "negligible business operations."

The Protocol does not provide a procedure or an enforcement mechanism for the Limitation of Benefit, nor does the provision state which country has authority over such determinations. Therefore, the Limitation of Benefit will likely depend upon cooperation from the government of Mauritius, which has not released a statement regarding shell companies and has a strong incentive to protect its offshore fund industry. The Indian revenue department has also not provided additional detail regarding shell company status, and given Mauritius' reputation as an offshore tax haven, India may take the position that many funds that are structured as Mauritius entities are shell companies subject to the Limitation of Benefit.

For Mauritius entities that are not shell companies, the tax loophole for interest and dividend income will close on April 1, 2017, and income derived from capital gains will be subject to the 50 percent transition period tax rate until March 31, 2019. Beginning on April 1, 2019, Mauritius entities must pay the full Indian capital gains tax.

How Will the Protocol Affect Singapore Funds?

Singapore-based India-focused investors are in even more confusing straits. The Mauritius DTAA, as amended, will begin to impose source state capital gains taxation on April 1, 2017. Therefore, due to the manner in which the Singapore DTAA and the Mauritius DTAA are linked, investors that are domiciled in Singapore stand to lose their capital gains tax benefits under the Singapore DTAA on April 1, 2017. It is not clear whether these investors would

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have the benefit of a transition period because, as written, the Singapore DTAA does not explicitly allow for a transition period.

Indian Finance Minister Arun Jaitley recently acknowledged that the Singapore DTAA lacks clarity regarding transition to source state taxation. Indian Finance Ministry officials have stated that India and Singapore will have to renegotiate the Singapore DTAA in order to extend the principles of the Mauritius DTAA, including the transition period and grandfathering of certain capital gains, to that treaty.[58] Although the April 1, 2017, deadline is fast approaching, there have been no formal discussions with Singapore yet. The Mauritius Protocol took nearly 10 years to negotiate.[59]

Will Fund Managers Move?

India intended to remove Mauritius and Singapore as tax efficient routes for foreign direct investment into India and presumably contemplated that investors would seek to relocate to the remaining jurisdictions that have entered into bilateral tax treaties with India and that offer advantageous tax treatment of Indian investments. Recent statements from Mr. Adhia confirmed that India is seeking to renegotiate its bilateral treaties that call for home state taxation of capital gains taxes, including the Netherlands treaty, in order to close these tax loopholes.[60] Concurrently with these statements, India stated its renewed desire to enter into negotiations with the Netherlands over its bilateral tax treaty.[61] Linkage of the Mauritius and Singapore DTAAs has already closed capital gains tax waivers for Singapore beginning April 1, 2017.

The Netherlands is now a strong alternative domicile for India-focused managers seeking tax efficiency. The Protocol will not affect the bilateral tax treaty between India and the Netherlands because that treaty is not linked with the Mauritius or the Singapore DTAAs. Among other things, the Netherlands treaty provides that capital gains derived from the sale of equities (other than listed shares) can be taxed in the source state only if the equities were 25 percent or more of the company that was sold.[62] All other capital gains are taxable only in the home state.[63]

Conclusion

Despite initial negativity from all investor classes, it is clear that the effects of the Protocol will be most pronounced on short-term equity investors, whereas other classes of investors may experience little or no impact. Given the exclusion of P-Notes, and Indian taxation of capital gains from unlisted securities, the Protocol may depress private equity and venture capital foreign direct investment and simultaneously incentivize hedge fund long-term direct equity investment and short-term equity exposure through derivatives and P-Notes. Because the Protocol is silent on important procedures, enforcement and jurisdictional matters, the success of the Protocol will depend upon the continued cooperation of the governments of India and Mauritius. Mauritius is likely to seek to protect its fund industry. Many questions remain unanswered at this time, including the status of derivatives and follow-on investments by private funds, as well as the future of the Singapore DTAA. These questions may be answered when the first phase of the Protocol, together with the new GAAR, come into effect on April 1, 2017.

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NOTES

1 Protocol Amending the Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion, India-Mauritius, May 10, 2016.

2 Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion, India-Mauritius, June 12, 1983.

3 Press Release, Government of India, Ministry of Finance, "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 - reg," Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (May 10, 2016), *http://www.incometaxindia.gov.in/Lists/Press%20Releases/?Attachments/?468/?Press-release-Indo-Mauritius-10-05-2016.pdf.*

4 Siddhartha P Saikia, "Mauritius Treaty: Tax waivers to stay for debt & derivatives," *The Financial Express* (July 6, 2016, 11:16 A.M.), *http://www.financialexpress.com/article/economy/tax-waivers-for-debt-derivatives-to-stay/?255077/.*

5 *Id*.

6 *See* table below for the current short term capital gains taxes in India, Mauritius and Singapore.

7 *Id*. at 10.6.

8 *Id.* at 13.4.

9 Only the interest income of governments, agencies or banks. *Id.* at 11.3.

10 *Id.* at 11.6.

11 *Id.* at 22.

12 This table is provided for informational and illustrative purposes only and does not contain legal advice. This table does not include every important development related to taxation. Tax percentages presented here are generalizations drawn entirely from the sources set forth in their relevant citations and are current as of the date of the relevant source. Actual tax burden may differ substantially from the information presented herein depending upon all of the relevant facts and circumstances and laws of the applicable jurisdiction.

13 Income-tax Act, 1961 Section 112(1) (1961) (India). Note that the Finance Bill for 2016 proposed in March 2016 advises changing the long-term capital gains rate of tax on unlisted Indian securities for start-ups to nil. *See* Finance Act, 2016, No. 28 of 2016, (2016) (India).

14 Note that tax rates presented are with respect to funds that meet the definition of an "Equity Oriented Fund," meaning that more than 65% of the assets of the fund are invested in equity shares in Indian companies.

15 "Short-term capital gains arising from transfer of Equity Shares, Units of an Equity Oriented Funds [sic] or a unit of a business trust which is chargeable to securities transaction tax shall be taxed at 15% under Section 111A." Government of India, Income Tax Department, *Treatment of Income from Different Sources*, *http://www.incometaxindia.gov.in/Pages/charts-and-tables.aspx* (July 12, 2016).

16 "Long-term capital gains arising from transfer of listed securities, units of equity oriented or a unit of business trust which is chargeable to STT shall be exempt from tax under Section 10(38)." Government of India, Income Tax Department, Treatment of Income from Different Sources, *http://www.incometaxindia.gov.in/Pages/charts-and-tables.aspx* (July 12, 2016)

17 "Doing Business in India," *Practical Law* (July 1, 2015), *http://us.practicallaw.com/4-500-8980?q=Doing+Business+in+India#a947897.*

18 *Id*.

19 "Doing Business in Mauritius," *Practical Law* (July 5, 2016), *http://us.practicallaw.com/7-383-9511??q=?Mauritius?#a461398.*

20 *Id*.

21 *Id, see* also Wasoudeo Balloo, "Mauritius Fiscal Guide 2013/14," KPMG (2014); *https://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Mauritius.pdf.* Note: Interest income from foreign investments is taxable as ordinary income; however tax on ordinary income for a Global Business License Category 1 (GBL 1) company is capped to the maximum effective rate of 3% of the chargeable income. GBL 1 companies are Mauritius resident companies for purposes

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of the Mauritius DTAA, and most Mauritius Route funds operate as GBL 1 companies.

22 *Id*. Note: Dividend income of a GBL 1 company is also taxable at the maximum effective rate of 3% of the chargeable income.

23 "Capital Gains," *Bloomberg BNA* (July 5, 2016), *http://taxandaccounting.bna.com/?btac/?T4100/?split_display.adp??fedfid=69768030&vname=tmippor&fcn=4&wsn=534344000&fn=69768030&split=0.* Note: Singapore has abolished the capital gains tax. "Singapore Tax Profile," KPMG (July 5, 2016) *https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/asia-pacific-tax-centre/Documents/CountryProfiles/Singapore.pdf.*

24 *Id*.

25 "Doing Business in Singapore," *Practical Law* (February 1, 2013), *http://us.practicallaw.com/4-524-0309?q=Doing+Business+in+Singapore#a434830.*

26 "Dividends Tax," *Bloomberg BNA* (July 5, 2016) *http://taxandaccounting.bna.com/?btac/?T4100/?split_display.adp??fedfid=69768061&vname=tmippor&fcn=9&wsn=534438000&fn=69768061&split=0.*

27 "Taxation and Investment in Netherlands 2015," Deloitte (July 5, 2016), *https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-netherlandsguide-2015.pdf.* Note: Capital Gains are included in taxable profits and subject to the normal corporate income tax rate (20% or 25%); however, special provisions in the Netherlands' corporate income tax code provide for a 0% corporate income tax, or in some circumstances exemption from corporate income tax, for certain fund structures. These exemptions include the "exempt investment fund" which is itself exempt from corporate income tax and distributions from the entity are not subject to withholding tax, and the "fiscal investment fund" which is subject to corporate income tax at 0% and distributions are subject to withholding tax of 15%. Additionally, funds that are structured as "tax transparent funds" are generally not seen as persons for corporate income tax and dividend withholding purposes. *See* Oscar van Angeren, Sylvia Dikmans and Daan Horsthis, Houthoff Burama, "Investment funds in The Netherlands: regulatory overview," *Practical Law* (May 1, 2013), *http://us.practicallaw.com/cs/Satellite/us/resource/1-501-3129?source=relatedcontent.*

28 *Id*.

29 *Taxation and Investment in Netherlands 2015*, *supra* n.27.

30 "Dividends," *Bloomberg BNA* (July 5, 2016) *http://taxandaccounting.bna.com/?btac/?T4100/?split_display.adp??fedfid=64774750&vname=tmippor&fcn=25&wsn=525322000&fn=64774753&split=0#64774753.*

31 Mauritius DTAA at art. 10(5), (6); art. 11(6), (7); art. 13(2); art. 22(2), *supra* n.2.

32 *Id.* at art. 5

33 Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion, India-Sing., art. 6, May 27, 1994.

34 *Id*.

35 Press Release, *supra* n.3; Mauritius DTAA, *supra* n.2.

36 Protocol, *supra* n.1, art. 4. Note: the protocol refers to capital gains from the "alienation" of shares and therefore the scope of the provision may be broader than the sale of shares. "Alienation" of property may also occur when the property is exchanged or redeemed. However, the Protocol amendment to the capital gains section of the Mauritius DTAA only refers to "shares." Accordingly, it is not clear that the changes affecting capital gains will also apply to the interests of non-corporate entities.

37 *Id*.

38 *Id.* at 8.

39 *Id.* at 2.

40 *Id.* at 2.

41 *Id.* at 5.

42 *Id.* at 6.

43 *Id.* at 6.

44 *Id.* at 7.3.

45 "Long-term" capital gains accrue from the sale or transfer of securities that have been held for more than 36 months.

46 *See supra* n.16. The STT is an Indian transactional tax levied on every purchase or sale of securities that is

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listed on the Indian stock exchanges. The amount paid in STT can be deducted from short-term capital gains. *See* Overseas Indian Facilitation Centre, *Ready Referencer for Overseas Indians*, (July 6, 2016), *https://www.mea.gov.in/?images/?pdf/OIFCReadyReferencerforOverseaIndians.pdf*

47 *Id*.

48 Saikia, *supra* n.4.

49 *Id*.

50 *Id*.

51 "FM rules out ban on participatory notes," *The Economic Times* (July 6, 2016, 11:16 A.M.), *http://articles.economictimes.indiatimes.com/?2007-10-18/news/27690018_1_pn-route-participatory-notes-capital-inflows.*

52 "Draft guidelines regarding implementation of General Anti Avoidance Rules (GAAR) in terms of section 101 of the Income Tax Act, 1961," *Indian Finance Ministry,* (July 5, 2016) *http://www.finmin.nic.in/?the_ministry/?dept_revenue/?Draft_GAAR_GuidelineITAct1961.pdf.*

53 *Id*.

54 Protocol, *supra* n.1 at art. 2.

55 *Id* at art. 8.

56 *Id*.

57 *Id*.

58 Deepshikha Sikarwar, "After Mauritius, now government wants to amend Dutch tax treaty; asks Netherlands to resume talks," *Economic Times* (July 5, 2016) *http://economictimes.indiatimes.com/news/economy/policy/after-mauritius-now-government-wants-to-amend-dutch-tax-treaty-asks-netherlands-to-resume-talks/articleshow/52495938.cms.*

59 ET Bureau, "Revised Mauritius tax pact may hit overseas fund flows" (May 10, 2016) *http://economictimes.indiatimes.com/articleshow/52210190.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst*.

60 Saikia, *supra* n.4.

61 Sikarwar, *supra* n.58.

62 Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion, India-Neth, art. 13.4, Jan. 21, 1989.

63 *Id*.

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