# Mauritius Cabinet approves amending DTAA with India

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Mauritius Government has decided to amend Double Taxation Avoidance Agreement (DTAA) with India in order to go with OECD's proposal on Base Erosion and Profit Shifting. Experts say these amendments will result in more challenging norms for multinationals investing in India.

"Cabinet has agreed to the signing of a Protocol to amend the Double Taxation Avoidance Convention between the Government of the Republic of Mauritius and the Government of the Republic of India in order to comply with the Base Erosion and Profit Shifting (BEPS) minimum standards of the Organisation for Economic Co-operation and Development (OECD)," highlights of Cabinet's decision posted on th website of Mauritius's Prime Minister office mentioned. The decision was taken on February 23.

Explaining the decision, Sandeep Jhunjhunwala, M&A Tax Partner at Nangia Andersen LLP said it represents a significant stride towards harmonizing with global tax

norms. The primary aim of this amendment is to forestall opportunities for tax avoidance or minimisation through exploitative tactics. This modification would now elevate the India-Mauritius tax treaty to the status of a covered tax agreement under BEPS MLI (Multilateral Instrument).

"Multinational corporations with entity structures in India and Mauritius could now possibly see enforcement of more challenging treaty rules on account of implementation of BEPS MLI," he said

## BILATERAL TREATIES

The minimum standard requires the adoption, at a minimum, of rules in bilateral tax treaties that effectively address treaty shopping. First, treaties should include, in their title and preamble, a clear statement that the States that enter into a tax treaty intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping.

Second, countries will implement this common intention by including in their treaties: requires a combination of a "limitation-on-benefits" rule (LOB, which is a specific anti-abuse rule) and of a "principal purpose test" rule (PPT, a general anti-abuse rule). The inclusion of these two rules will be supplemented by a mechanism that deals with conduit arrangements, such as a restricted PPT rule applicable to conduit financing arrangements in which an entity otherwise entitled to treaty benefits acts as a conduit for payments to third-country investors.

## CAPITAL GAINS TAX

Mauritius was initially the preferred channel for foreign portfolio and foreign direct investors due to the tax advantage that accrued to them due to the DTAA.

The agreement laid down that capital gains tax had to be paid in the country where the foreign investor was based. Since the rate of capital gains tax in Mauritius was zero, investors from this country paid no capital gains tax.

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“This modification would now elevate the India-Mauritius tax treaty to the status of a covered tax agreement under BEPS MLI, ushering in a new era of anti-abuse and limitation of benefit rules, principal-purpose test and inclusion of arbitration in the mutual agreement procedure,” Sandeep Jhunjhunwala, M&A Tax Partner at Nangia Andersen LLP said. Multinational corporations with entity structures in India and Mauritius could now possibly see enforcement of more challenging treaty rules on account of implementation of BEPS MLI (Multilateral Instrument), he added.