

Kind Attn:

**Joint Secretary (FT&TR-II),
Central Board of Direct Taxes.**

By email to dirftr4-rev@gov.in

Subject: Comments on issues arising out of amendment to India-Mauritius DTAA.

Ref: Protocol amending the DTAA between India and Mauritius.

Dear Sir,

We are grateful for the opportunity to comment and provide suggestions on issues arising out of the amendment to India-Mauritius DTAA.

We refer to the Protocol amending India-Mauritius DTAA which was recently signed by both countries on 10th May 2016. The text of the aforesaid Protocol has been made public by the Ministry of Finance and Economic Development, Republic of Mauritius¹. We have herein below highlighted an important issue arising from the amendment to the India-Mauritius DTAA.

ARTICLE 4 OF PROTOCOL

1. Article 4 of the aforesaid Protocol provides for amending Article 13 of the India-Mauritius DTAA whereby India would also be granted a right to tax Mauritian residents on capital gains earned from the alienation of shares (of a company resident in India) acquired on or after 1st April 2017.
2. One of the issues arising out of the aforesaid amendment to Article 13 of the India-Mauritius DTAA relates to the consequential effect of the amendment on Article 13 of the India-Singapore DTAA. In this context, it may be mentioned that India and Singapore had signed a Protocol to India-Singapore DTAA on 29th June 2005².

¹ <http://mof.govmu.org/English/Documents/Protocol%20to%20the%20Mauritius%20-%20India%20DTAC%20signed%20on%2010%20May%202016.pdf>

² Unless mentioned otherwise, all references to the Protocol to India-Singapore DTAA mean the Protocol signed by India and Singapore on 29th June 2005

- a. Article 1 of this Protocol grants exclusive taxation rights to Singapore for taxing Singaporean residents on capital gains earned from the alienation of shares of a company resident in India.
 - b. Article 3 of this Protocol pertains to the Limitation of Benefits ('LOB') clause if a Singaporean resident intends to avail exemption from tax in India from sale of such shares.
 - c. Whereas Article 5 stipulates that an inter-governmental group consisting of representatives of the revenue authorities of India and Singapore shall review the working of the provisions of this Protocol (including Article 1 and 3) at least once a year or earlier on request and may make recommendations for improvements including improvements to the provisions of this Protocol.
 - d. Importantly, Article 6 mentions that Article 1, 3 and 5 would remain in force only so long as India-Mauritius DTAA contains provisions for granting exclusive taxation rights to the State of residence of a person on the capital gains earned by that person from alienation of shares of a company resident of the other State.
3. Article 6 of the Protocol to India-Singapore DTAA is a co-terminus provision which links the granting of exclusive taxation rights under Article 13(4) of India-Singapore DTAA to the survival of similar clause granting exclusive taxation rights under the India-Mauritius DTAA. Further, even the LOB clause would survive only so long as the clause granting exclusive taxation rights under the India-Mauritius DTAA would be present. This co-terminus provision is fairly similar to a Most Favored Nation ('MFN') clause except that instead of granting benefit under the existing DTAA, this provision does away with the existing benefit under the respective DTAA. Notwithstanding Article 5 of the Protocol amending India-Singapore DTAA which provides for a periodic review of the provisions of aforesaid Protocol, with the introduction of changes in Article 13 of India-Mauritius DTAA to take effect from 1st April 2017, the taxation rights on the capital gains from alienation of shares of a company would no longer remain exclusive with the State of residence of a person earning those gains w.e.f. 1st April 2017. Similarly, the LOB clause would also cease to remain in force w.e.f. 1st April 2017. In effect, the erstwhile provisions of Article 13 of India-Singapore

DTAA³ would become effective from 1st April 2017 afresh unless India and Singapore engage in renegotiations of the DTAA signed between them. This is unlike typical MFN clauses prevalent in some of the Indian DTAA⁴ which mandatorily require renegotiation by both Contracting States before benefits under a different DTAA can be extended to the DTAA between the two Contracting States.

4. It has been widely reported in the news reports⁵ that unless the India-Singapore DTAA is renegotiated and consequently amended, the provisions of Protocol amending India-Mauritius DTAA would have no effect on the provisions of the existing India-Singapore DTAA. The statements made in those news reports are in contradiction to the text of Article 6 of the Protocol to India-Singapore DTAA. This has created considerable confusion about the validity of the provisions of Protocol to India-Singapore DTAA (including Article 1 and 3 therein). The confusion can be manifested with the help of following two illustrations:
 - a. In the eventuality that India-Singapore DTAA renegotiation does not conclude before 1st April 2017 *or* that the intended changes to the India-Singapore DTAA do not come into effect from 1st April 2017 for want of completion of procedures required by law of each Contracting State for the bringing into force the intended changes, what would be the status of Article 1 of the Protocol to India-Singapore DTAA?
 - b. Article 4 of Protocol amending India-Mauritius DTAA would come into effect from 1st April 2017 onwards. If however the procedures required by law of each Contracting State for bringing into force the provisions of this Protocol are not completed before 1st April 2017, it would mean that Article 4 of the Protocol amending India-Mauritius DTAA would have retrospective effect. In the meanwhile, what would be the status of Article 1 of the Protocol to India-Singapore DTAA till the Protocol amending India-Mauritius DTAA comes into force?

We therefore urge you to issue a clarification stating that provisions of Article 13 of India-Singapore DTAA would automatically stand modified w.e.f. 1st April 2017 on account of the

³ i.e. Provisions of Article 13 as appearing before they were amended vide Protocol to India-Singapore DTAA which became effective from 1st August 2005

⁴ For e.g. Refer Article 11 of Protocol to India-Switzerland DTAA signed on 30th August 2010

⁵ <http://www.financialexpress.com/article/economy/finance-minister-to-conclude-treaty-revision-with-spore-cyprus-in-fy17/262596/> ; <http://economictimes.indiatimes.com/news/economy/policy/after-mauritius-tax-treaty-government-looking-to-rework-pact-with-singapore/articleshow/52230209.cms>

provisions of the Protocol amending India-Mauritius DTAA unless the provisions of Article 13 of India-Singapore DTAA are otherwise renegotiated by India and Singapore and become effective before such date.

We sincerely hope that the above comments may be considered and be useful to the benefit of the CBDT.

Yours sincerely,

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