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TAX

India-Mauritius DTAA Amendment, 2026

AUTHOR Aditi Gusain

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1. Introduction

International tax treaties are intended to facilitate cross-border economic activity by preventing double taxation and providing certainty regarding the allocation of taxing rights between contracting states. However, the benefits available under these agreements have also created opportunities for investors to structure transactions through jurisdictions offering favourable tax treatment, sometimes without a corresponding commercial rationale.

The India–Mauritius Double Taxation Avoidance Agreement has historically been one of the most significant tax treaties influencing foreign investment into India. Mauritius emerged as an important investment route, particularly because of the favourable capital gains treatment available under the earlier treaty framework.

Over time, concerns arose regarding the use of intermediary entities to obtain treaty benefits that might otherwise not have been available to investors from third jurisdictions.

Against this background, the Ministry of Finance issued Notification S.O. 5611(E) on 13 October 2026, notifying the Protocol amending the India–Mauritius DTAA. Although the Protocol was signed on 7 March 2024, it entered into force on 10 August 2026, following the completion of the required procedures by both contracting states.

The amendment introduces two principal changes:

- a revised Preamble expressly addressing tax avoidance and treaty shopping; and
- a new Article 27B incorporating the **Principal Purpose Test**.

Together, these provisions seek to ensure that treaty benefits are granted in accordance with the object and purpose of the Convention rather than merely on the basis of formal compliance with residency requirements.

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2. Background

The India-Mauritius DTAA was signed on 24 August 1982 and entered into force on 1 April 1983. Under its earlier framework, capital gains derived by a Mauritius resident from the transfer of Indian shares were generally taxable in Mauritius. This treatment, coupled with the domestic tax regime in Mauritius, made it an attractive jurisdiction for foreign investors.

The position received further administrative recognition through **CBDT Circular No. 789 of 2000**, which recognised a Tax Residency Certificate (TRC) issued by the Mauritian authorities as sufficient evidence of residence for claiming treaty benefits.

The Supreme Court, in *Union of India v. Azadi Bachao Andolan*, (2003) 263 ITR 706 (SC), upheld the validity of this approach and did not treat treaty shopping, by itself, as inherently impermissible.

2.1. Treaty Shopping Concerns and the 2016 Protocol

However, the growing use of intermediary investment entities raised concerns regarding treaty shopping and the possibility of securing tax advantages through structures lacking genuine commercial substance.

The 2016 Protocol introduced source-based taxation of capital gains arising from the transfer of shares acquired on or after 1 April 2017, while retaining grandfathering protection for qualifying earlier investments. It also introduced a Limitation of Benefits (LOB) provision.

2.2. Why the MLI Did Not Modify the DTAA

A further development emerged with India's adoption of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

Although India adopted the Principal Purpose Test under the MLI, the India–Mauritius DTAA was not effectively modified through that mechanism because the necessary matching notifications identifying the Convention as a Covered Tax Agreement were not made by both jurisdictions. Consequently, a separate bilateral amendment became necessary.

India and Mauritius accordingly signed the Protocol on 7 March 2024 to incorporate the anti-abuse measures envisaged under the OECD BEPS framework, particularly the Principal Purpose Test.

3. Notification S.O. 5611(E): Examining the Principal Amendments

The Central Government issued **Notification S.O. 5611(E)** on 13 October 2026, exercising its powers under Section 159(1) of the Income-tax Act, 2025. The notification gives effect to the Protocol amending the Convention signed in 1982, as previously amended in 2016.

The Protocol introduces two substantive changes and contains a separate provision governing its entry into force and effective date.

3.1. Revision of the Preamble: Recognising Treaty Shopping as an Anti-Abuse Concern

Article 1 of the Protocol replaces the existing Preamble of the India–Mauritius DTAA.

The **revised Preamble** states that the Convention is intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. It specifically includes treaty-shopping arrangements intended to obtain relief under the Convention for the indirect benefit of residents of third jurisdictions.

The significance of this change lies in the express recognition of treaty abuse as an issue that the Convention seeks to prevent. The Preamble provides interpretative context for understanding the purpose of the treaty and assists in determining whether a particular claim for relief is consistent with the intentions of the contracting states.

The amendment is particularly relevant where an investor uses a Mauritius-based intermediary entity primarily to obtain benefits under the Convention, despite the underlying economic arrangement being connected with a third jurisdiction.

However, the revised Preamble does not prohibit every investment routed through Mauritius. The existence of an intermediary holding company or a favourable tax outcome cannot, by itself, establish treaty abuse. The circumstances and purpose of the particular arrangement remain relevant.

3.2. Introduction of Article 27B: The Principal Purpose Test

The most significant amendment is the insertion of **Article 27B**, titled 'Entitlement to Benefits', after the existing Article 27A.

The provision states that a benefit under the Convention shall not be granted in respect of an item of income where, having regard to all relevant facts and circumstances, it is reasonable to conclude that obtaining that benefit was one of the principal purposes of an arrangement or transaction that resulted directly or indirectly in the benefit.

However, the provision also contains an important exception. Treaty benefits may still be granted where it is established that granting them in the circumstances would be consistent with the object and purpose of the relevant provisions of the Convention.

Two aspects of this language deserve particular attention:

1. Obtaining a tax benefit need not be the *sole* purpose of the arrangement. The expression 'one of the principal purposes' allows the authorities to examine arrangements having multiple commercial and tax-related objectives.

2. The provision does not establish an automatic prohibition against tax-efficient investment structures. Even where obtaining a treaty benefit was one of the principal purposes, the exception requires consideration of whether granting that benefit would remain consistent with the purpose of the relevant treaty provision.

Thus, Article 27B introduces a fact-specific examination of treaty entitlement rather than an automatic denial of relief.

4. Effective Date and the Position of Existing Investments

An important aspect of the notification concerns the distinction between the date of signing, the date of entry into force and the date of domestic notification. The Protocol was:

1. signed on 7 March 2024;
2. entered into force on 10 August 2026; and
3. notified in India on 13 October 2026.

Article 3(2) provides that the Protocol shall have effect from its date of entry into force, without regard to the date on which taxes are levied or the taxable years to which they relate.

4.1. Grandfathering Under CBDT Circular No. 01/2025

The effective date is particularly relevant when considering existing investment structures. In this regard, **CBDT Circular No. 01/2025**, dated 21 January 2025, provides important guidance concerning the prospective application of the Principal Purpose Test.

It clarifies that where the PPT is incorporated through a bilateral treaty or amending Protocol, it shall apply from the date on which the relevant instrument enters into force.

The Circular also specifically recognises the grandfathering commitments under the India–Mauritius DTAA. Qualifying capital gains arising from the transfer of shares of an Indian company acquired before 1 April 2017 remain outside the scope of the PPT and continue to be governed by the relevant treaty provisions.

Consequently, the introduction of Article 27B should not be interpreted as automatically withdrawing the grandfathering protection available under the 2016 Protocol. Such protection, however, remains subject to the conditions prescribed under the relevant treaty provisions.

4.2. Domestic Anti-Avoidance Rules

The position concerning domestic anti-avoidance provisions requires separate consideration. The CBDT Press Release dated 15 March 2025 clarified that the guidance issued under Circular No. 01/2025 does not interfere with domestic anti-abuse mechanisms, including GAAR, Specific Anti-Avoidance Rules (SAAR) and judicial anti-abuse rules. These mechanisms continue to operate independently.

This distinction is important because treaty-specific grandfathering and domestic GAAR protection arise from different legal provisions and must not be treated as interchangeable.

5. Interaction Between the PPT and GAAR: The Tiger Global Context

The introduction of Article 27B must also be examined alongside India's existing **General Anti-Avoidance Rules** under Chapter X-A of the Income-tax Act, 1961, and the corresponding provisions under the Income-tax Act, 2025.

While the PPT operates as a treaty-level restriction on the availability of benefits under the Convention, GAAR is a domestic statutory mechanism dealing with impermissible avoidance arrangements. The two mechanisms operate independently and may be invoked on different legal grounds.

5.1. The Tiger Global Decision

The distinction became particularly significant in *The Authority for Advance Rulings (Income Tax) and Others v. Tiger Global International II Holdings*, 2026 INSC 60, decided on 15 January 2026. The Supreme Court delivered a common judgment in three appeals concerning Mauritius-based Tiger Global entities.

The dispute arose from the transfer of shares in a Singapore-based holding company associated with Flipkart, as part of Walmart's acquisition of Flipkart. The Mauritius entities claimed protection under the India–Mauritius DTAA.

The Authority for Advance Rulings declined to entertain their applications under Section 245R(2)(iii) of the Income-tax Act, 1961, on the ground that the transaction was prima facie designed for the avoidance of income tax. The Delhi High Court subsequently set aside the AAR's decision.

The Supreme Court allowed the Revenue's appeals and restored the AAR's order. It held, among other things, that a Tax Residency Certificate establishes evidence of residence but does not, by itself, conclusively determine entitlement to treaty benefits in the context of the applicable anti-avoidance framework.

The Court also examined Rule 10U(2) of the Income-tax Rules, 1962, and its application to arrangements involving pre-1 April 2017 investments where tax benefits arose subsequently.

5.2. GAAR Grandfathering Amendments After Tiger Global

The legal position was further clarified through two notifications, both dated 31 March 2026:

- Notification No. 54/2026 amended Rule 10U of the Income-tax Rules, 1962.
- Notification No. 55/2026 amended Rule 128 of the Income-tax Rules, 2026.

These amendments exclude qualifying income arising from the transfer of investments made before 1 April 2017 from the relevant GAAR provisions.

These amendments were introduced after the Supreme Court's decision in *Tiger Global* and clarify the statutory grandfathering position for qualifying pre-2017 investments. They must therefore be considered separately from the legal position examined by the Court as it stood when the judgment was delivered.

The judgment does not interpret the newly introduced Article 27B, which entered into force several months later. Its relevance lies in demonstrating that treaty entitlement, the evidentiary value of a TRC and domestic anti-avoidance rules involve distinct legal inquiries.

6. Implications for Foreign Investors and Cross-Border Investment Structures

The introduction of Article 27B is likely to influence how foreign investors evaluate and maintain their investment structures in India. The following investors may need to pay closer attention to the **commercial rationale** behind their investment arrangements:

- Mauritius-based holding companies
- foreign portfolio investors
- private equity funds
- multinational groups

In particular, the following considerations assume greater significance:

- **Commercial rationale:** Investors should maintain clear documentation explaining the commercial, financial or organisational reasons for choosing Mauritius as an investment jurisdiction.
- **Corporate governance:** Board records, investment approvals and management decisions may become relevant in assessing the circumstances surrounding an investment arrangement.
- **Tax Residency Certificates:** A TRC remains relevant evidence of residence, but it does not provide an unconditional guarantee of entitlement to every treaty benefit.
- **Existing investment structures:** Investors should distinguish between the protection available under treaty grandfathering provisions and the independent operation of domestic anti-avoidance rules.

Importantly, Article 27B does not prescribe a mandatory minimum number of employees, expenditure threshold or physical-presence requirement in Mauritius. Its application depends on the relevant facts and circumstances of each arrangement.

The amendment should therefore not be understood as imposing an identical substance checklist on all Mauritius-based investors. Instead, it introduces a more purpose-oriented assessment of treaty entitlement.

7. Conclusion

Notification S.O. 5611(E) marks an important development in the evolution of the India–Mauritius DTAA. Through the revised Preamble and the introduction of Article 27B, the contracting states have expressly recognised the need to prevent treaty

benefits from being used for arrangements involving tax avoidance and treaty shopping.

The introduction of the **Principal Purpose Test** shifts attention towards the commercial purpose underlying cross-border transactions and the circumstances in which treaty benefits are claimed. At the same time, CBDT Circular No. 01/2025 and the subsequent amendments to the GAAR grandfathering rules preserve the distinction between treaty-level anti-abuse measures and domestic statutory safeguards.

The amendment should not be viewed as the end of Mauritius-based investment into India. Rather, it signals a change in the legal standards governing access to treaty benefits.

Its effectiveness will ultimately depend on whether Article 27B is applied consistently, with sufficient attention to genuine commercial arrangements and the object and purpose of the Convention.

The central challenge for the Indian tax administration will be to prevent abusive treaty structures without creating unnecessary uncertainty for investors undertaking legitimate cross-border transactions.

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