Analysis: China – Mauritius Income Treaty

See treaty text
Type of Treaty: Income
Based on the OECD Model Treaty
Signed: August 1, 1994
Entry into force: May 4, 1995
Effective date: July 1, 1995. See Article 28.
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Article 1 Personal Scope

See treaty text
Persons who are residents of one or both States.

Article 2 Taxes Covered

See treaty text
China
The individual income tax
The income tax for enterprises with foreign investment and foreign enterprises
The local income tax
Mauritius
The income tax
Mauritius
Mauritius' treaties cover only income tax imposed primarily under the Income Tax Act of 1995, as amended. Social security payments, as well as indirect taxes (such as customs and excise duties on imports, and taxes on consumption or property) are generally not covered by Mauritius' treaties.

Article 3 General Definitions

See treaty text
"China": the People's Republic of China, that is, all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply. It also includes any area beyond the territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its subsoil and superjacent water resources in accordance with international law;
"Mauritius": the Republic of Mauritius, including:

- all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;

- the territorial sea of Mauritius; and

- any area outside the territorial sea of Mauritius which in accordance with international law is designated, under the laws of Mauritius, as an area, including the continental shelf, within which the rights of Mauritius with respect to the sea, the seabed and subsoil and their natural resources may be exercised.

"A Contracting State" and "the other Contracting State": Mauritius or China, as the context requires;
"Person": an individual, a company and any other body of persons as well as any entity treated as a taxable unit under the taxation laws in force in either Contracting State;
"Nationals":

- in China, all individuals possessing the nationality of China and all juridical persons created or organised under the laws of China, as well as organisations without juridical personality treated for tax purposes as juridical persons created or organised under the laws of China;

- in Mauritius, all individuals who are citizens of Mauritius and all legal persons, partnerships, associations or other entities deriving their status as such from the laws of Mauritius;

"Company": any body corporate or any entity that is treated as a body corporate for tax purposes;
"Enterprise of a Contracting State" and "enterprise of the other Contracting State": respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

"International traffic": transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, but not when the ship or aircraft is operated solely between places in the other Contracting State;
"Tax": Chinese tax or Mauritius tax, as the context requires;
"Competent authority": in China: the State Administration of Taxation or its authorised representative in Mauritius: the Commissioner of Income Tax or his authorised representative.

Article 4 Resident

See treaty text

Mauritius

INDIVIDUALS
Individuals resident in Mauritius are taxed on their worldwide income. However, certain specific exemptions from tax are provided under the Income Tax Act.
An individual is treated for tax purposes as being resident in Mauritius in a particular tax year if the individual:

- has his/her domicile in Mauritius, but not if his/her permanent place of abode is outside Mauritius;
- is present in Mauritius in that year for 183 days or more; or
- is present in Mauritius in that year and the two preceding years for 270 days or more.

CORPORATIONS
A company is treated under Mauritian income tax law as resident in Mauritius if it is incorporated in Mauritius or has its central management and control in Mauritius. However, a company that has been issued with a Category 2 Global Business Licence (GBL2) under the Financial Services Act 2007 is treated as a non-resident for tax treaty purposes and will therefore not be entitled to any of the benefits provided under the treaty. GBL2 companies are licensed to carry on business only with non-residents and are generally prohibited from carrying on certain listed activities in Mauritius, including:

- banking and financial services
- holding or managing or dealing with a collective investment fund or scheme as a professional functionary
- providing registered office facilities, nominee, directorship, secretarial or other services for corporations; and
- providing trusteeship services as a form of business.

PARTNERSHIPS
A partnership (otherwise referred to as a sociÅtÅ) is resident in Mauritius if it has its seat or siege in Mauritius, and also includes a partnership which has at least one associate or associÅ or gÅrant resident in Mauritius.
TRUSTS AND ESTATES
A trust is treated as resident in Mauritius if it is administered in Mauritius and a majority of the trustees are resident in Mauritius, or if the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed.

Article 5 Permanent Establishment

See treaty text

For a Permanent Establishment to exist:

- There must be a place of business
- Place of business must be fixed
- Business must be conducted through fixed place

In addition to the listed illustrative examples contained in the OECD Model, the treaty also lists:

- a warehouse, in relation to a person providing storage facilities for others; and
- a farm or plantation.

Building sites, construction, installation or assembly projects, and supervisory activities in connection therewith, constitute a permanent establishment if they last more than 12 months.
The treaty adopts the UN Model provision by treating the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise, as constituting a permanent establishment if such activities last more than 12 months in any 24-month period.
The combination of preparatory or auxiliary activities will still not be considered to constitute a permanent establishment.
Mauritius
Mauritian tax law does not contain a comprehensive definition of the concept of permanent establishment, probably because that concept is not applied for purposes of subjecting to tax the Mauritian-source business profits of a non-resident. For the tests applied in such cases, see the comments below on the business profits article of the treaty.
The treaty therefore provides greater certainty and clarity consistent with the established tax treaty standard on the issue as to when a non-resident will be considered to have a presence in the country sufficient to bring it within the taxing jurisdiction of Mauritius on its business income.

Article 6 Income from Immovable Property

See treaty text
The treaty follows the general rule of providing for the exercise of taxing rights in relation to income from immovable property by the State in which the property is situated.
The treaty goes beyond the OECD Model by extending the scope of application of the principles governing the taxation of immovable property by the State of situs to the income derived from immovable property used for the performance of independent personal services.

Article 7 Business Profits

See treaty text
Distinct and separate enterprise approach
Apportionment of total profits permitted
Same profit attribution method to be used each year.
The treaty adopts the distinct and separate enterprise approach to the taxation of a permanent establishment contained in the OECD Model (2008).
On other issues, the treaty generally follows the OECD Model (2008) provisions in this area.
Mauritius
The concept of permanent establishment is not used under Mauritius' tax law for purposes of establishing the source of business income derived by a non-resident from Mauritius. However, where a non-resident who is present in Mauritius sells goods or does so through another person in Mauritius, and the goods are in Mauritius or will be brought into Mauritius for the purpose or in pursuance or consequence of the sale, the non-resident will be deemed to have sold the goods in the course of carrying on a business in Mauritius, whether or not the sale is made within or outside Mauritius. In cases where the non-resident person sells the goods through a person who is present in Mauritius, that person will be deemed to be the non-resident's agent in respect of all the income derived from the business carried on in Mauritius by the non-resident. Consequently, that person becomes liable to income tax on the income, whether or not the non-resident in fact receives the income.
Since treaties generally override domestic law, the effect of the treaty will be to ensure that any tax liability arising for a resident of the other State may only occur in a manner consistent with the treaty provisions.

Article 8 Shipping and Air Transport

See treaty text
Taxation in the State of residence of the enterprise.
No express requirement for taxation of profits relating to boats engaged in inland waterways transport only in the State in which the place of effective management is situated.
Unlike in the OECD Model, the profits are taxable in the State of residence of the enterprise and not the place of effective management of the enterprise.
The treaty also follows the common approach in Mauritius' treaties of omitting the provisions dealing with the tax treatment of profits from inland waterways transport.

Article 9 Associated Enterprises

See treaty text
Usual OECD provisions regarding transfer pricing
Arm's length principle applies in dealings between associated enterprises

The treaty adopts the standard OECD Model paragraph regarding the application of the arm's length principle to associated enterprises.

Article 10 Dividends

See treaty text

Treaty rate: 5%

Domestic rates:

Mauritius

Mauritius imposes no tax on dividend payments by Mauritius-resident companies.

Expert Analysis

Mauritius

In view of the full exemption of dividends from taxation under Mauritius' domestic law, the treaty provisions governing the taxation of cross-border dividends are of little practical relevance for non-residents deriving dividend income from Mauritian-resident companies. The provisions provide relief only for Mauritian residents deriving income from the other State, if such income is taxed at a rate higher than what the treaty permits.

Article 11 Interest

See treaty text

Treaty rate: 10% maximum

Domestic rates:

Mauritius

Interest payments to non-residents are subject to a final withholding tax at the rate of 15% of the gross amount.

It appears to be standard treaty practice for Mauritius to include exemptions for income derived by the State or particular State agencies, where the treaty permits source State taxation of such income. Thus, the treaty incorporates a reciprocal tax exemption for interest income directly or indirectly derived by the government or its agencies.

As in the OECD Model, the treaty adopts the permanent establishment exception to the general treaty principle governing the taxation of interest income. However, it also refers to a fixed base used for the performance of independent personal services as a separate exception to the general principle.

Article 12 Royalties

See treaty text

Treaty rate: 10% maximum

Domestic rates:

China

A 10% withholding tax applies to royalties paid to a nonresident unless the rate is reduced under a tax treaty.

Mauritius

Royalty payments to non-residents are subject to a final withholding tax at the rate of 15% of the gross amount.

A number of exemptions are provided under the domestic law for royalties paid to non-residents, notably:

- royalties payable by a corporation that holds a Category 1 or Category 2 Global Business Licence;

- royalties payable by a licensed bank where the royalties are paid out of the gross income the bank derives from its banking transactions with non-resident persons and corporations that hold a Global Business Licence; and

- royalties paid by a trust.

In a marked departure from the OECD Model, which confers exclusive taxing rights upon the State of residence of the recipient, this treaty, as does most of Mauritius' treaties, provides for shared taxation between the source and residence States.

The scope of royalties under the treaty is broader than under the OECD Model, in that it covers payments for the use of, or the right to use:

- films or tapes for radio or television broadcasting; and

- industrial, commercial or scientific equipment.

Article 13 Capital Gains

See treaty text

The treaty generally follows the OECD provision on this issue, with a few notable deviations.

The treaty provides additionally for gains on movable property pertaining to a fixed base used for the performance of independent personal services, which is subject to the same principle as gains on movable property that is part of the assets of a permanent establishment. This means taxation by the State in which the enterprise or fixed base is situated.

Gains from the alienation of ships and aircraft (the treaty omits reference to boats engaged in inland waterways transport) are to be taxed by the State of residence of the operator and not the State in which the effective management of the enterprise is situated.

Unlike most of Mauritius' treaties, the treaty deals specifically with the issue of the tax treatment of shares whose underlying assets consist mainly of immovable property situated in a Contracting State. Such gains are to be taxed by the State in which the immovable property is situated.

Capital gains are not taxed in Mauritius, thus making the provisions of the tax treaty on this issue of less practical relevance for non-residents realising such gains in Mauritius. As in the case of dividends, the treaty provisions are of greater importance to Mauritian residents realising taxable gains from the other State.

Article 14 Independent Personal Services

See treaty text

General UN Model provision applies.

The treaty retains the separate article on the taxation of income of an individual who provides independent personal services. It is based on the UN Model, which did not follow the OECD Model modification in 2000 to assimilate the tax treatment of such income with the treatment of business profits.

The tax treatment of such income is similar to that for business profits (i.e. the attribution of income to the fixed base from which the person performs his activities). Alternatively, the individual becomes taxable in the State if he is present in that State for a period or periods exceeding in the aggregate 183 days in any 12-month period.

The type of services covered by the provision comprise those listed in both the UN Model and the former OECD Model version, that is, including independent scientific, literary, artistic, educational or teaching activities and the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

See treaty text

The general rule applies.

The treaty generally follows the OECD Model. However, it deviates from the Model in relation to the taxation of remuneration for employment exercised aboard a ship or aircraft operated in international traffic. Here, the treaty provides for taxation by the State of residence of the person carrying on the enterprise and not, as in the case of the Model, the place of effective management of the enterprise. The treaty omits reference to the exercise of employment aboard a boat engaged in inland waterways transport.

Article 16 Directors' Fees

See treaty text

The general treaty rule applies. Thus, directors' fees paid by a company resident in one State to a resident of the other State may be taxed in the State of which the company is a resident.

The treaty follows the OECD provision on this issue, which accords the taxing right in relation to directors' fees and other similar payments to the State of which the company paying such fees is a resident. The treaty provision, which is followed in virtually all of Mauritius' treaties so far concluded, is consistent with Mauritius' domestic tax practice, which treats directors' fees as having been derived from a Mauritius source if the paying company is a resident of Mauritius, whether the services are performed in, or from outside, Mauritius.

Article 17 Artistes and Athletes

See treaty text

General rule applies.

If services performed are wholly or mainly supported by public funds, exempt from tax in the source State and taxable in residence State only.

Following the OECD Model provision on this issue, the treaty adopts the exception to the general provisions governing the exercise of taxing rights in relation to business and employment income,

where such income is derived by visiting artistes and sportspersons from their activities in the host State. In such cases, it is accepted that the State from which the income is derived (i.e. the host State) is entitled to tax such income without limits.
Furthermore, the host State's taxing right in relation to the income derived by the artiste or sportsperson is not affected by the fact that the income accrues to another person and not directly to the artiste or sportsperson as such. Thus, the income would still be taxable by the host State regardless, for example, of the residence status of such other person. In all of the above cases, it is up to the host State to determine the manner in which to exercise its taxing right.
The government of Mauritius uses its tax treaties as part of the tools for promoting international and cross-cultural exchanges. Thus, in common with most of the treaties it has concluded, this treaty includes an additional provision, which accords exceptional treatment to income derived by visiting artistes and sportsmen from Mauritius where the activities are substantially supported with public funds.

Article 18 Pensions

See treaty text

Exclusive taxation by the State of residence of the recipient.
Exclusive source State taxation of payments under the public social security scheme of that State.
The treaty follows the OECD Model provision governing the taxation of pensions and similar remuneration relating to past employment. This means that, in principle, exclusive taxing rights in respect of such income is exercisable by the State of which the recipient is a resident, subject to the treaty provision governing government pensions.
However, the treaty also follows the UN Model provision, which permits exclusive taxation in the State of source of pensions paid and other payments made under a public scheme which is part of the social security system of that State or of its local authorities.

Article 19 Government Service

See treaty text

OECD Model provision generally followed.
In accordance with the OECD Model provision on this issue, remuneration for services rendered by an individual to a government, its political subdivision or local authority, as well as pensions paid by, or out of funds created by, such entities, is taxable only by the State to which the services are rendered.
Again, following the OECD Model provision, the treaty provides alternatively for the exclusive taxation of such payments by the other Contracting State if the services are rendered to that other State by an individual who is both a resident and national of that State. However, where, in the case of remuneration, the individual became a resident of that State solely for the purpose of rendering such services, this alternative rule will not apply.
Finally, payments made for services performed by the individual in connection with a business carried on by any of the above entities will not be subject to the principles stated above but may instead be treated in accordance with the other specific treaty provisions, depending on the characterisation of the payments. These provisions include, in particular, those governing wages and salaries, directors' fees, income derived by artistes and sportsmen, and pensions.
Note that the principles governing the treatment of payments for services rendered to a government in a diplomatic or consular capacity supersede the above provisions. Thus, the above provisions generally cover cases which fall outside the rules governing the tax treatment of diplomats and consular agents.

Article 20 Teachers and Researchers

See treaty text

Exemption on remuneration from teaching or research activities conducted in the host State.
An individual normally resident in one State may visit the other State for a period of up to two years in order to teach, give lectures or carry on research in a university, school or educational institution or scientific research institution approved by the Government of the State visited.
The remuneration derived from such activities is exempt from taxation in the host State.

Article 21 Students and Trainees

See treaty text

General rule applies.
A student, business apprentice or trainee who is present solely for the purposes of his education or training is exempt from taxation on the following payments received for the purpose of his maintenance, education or training:

- payments from a foreign source;

- government grants, scholarships or awards or those supplied by a scientific, educational, cultural or other tax-exempt organisation; and

- income from personal services performed in that State.

Article 22 Other Income

See treaty text

Taxation only in the State of residence.

The treaty follows the standard OECD Model provision, which assigns exclusive jurisdiction to tax such income to the State of residence.

The treaty also adopts the standard OECD Model provision regarding the exception to the jurisdictional principle stated above, where the income is associated with the activity of a permanent establishment which the resident deriving the income has in the other Contracting State, in which case it is to be treated as taxable in accordance with the treaty provisions governing business profits. Under the treaty, a similar exception exists for income associated with a fixed base from which the resident performs independent personal services. In such a case, the taxation of the income will be governed by the treaty provisions pertaining to income from independent personal services (i.e. Article 14).

Article 23 Methods for the Elimination of Double Taxation

Article 23 analysis

See treaty text

China

Credit method; but:

An underlying tax credit will be granted for dividends paid by a Mauritius-resident company to a Chinese-resident company with a direct or indirect ownership of at least 10% of the shares of the Mauritian company.

Tax sparing credit

Mauritius

Credit method; but:

An underlying tax credit will be granted for dividends paid by a Chinese-resident company to a Mauritian resident company with an ownership of at least 10% of the shares of the Chinese company.

Tax sparing credit

Under Mauritius' domestic tax law, unilateral double taxation relief in the form of an ordinary credit is available for foreign-source income that has been subject to tax abroad. The relief will be granted only where the income is taxable in Mauritius and the foreign tax is of a similar character to Mauritius tax. The amount of taxable income in respect of which relief is granted is computed without reference to the foreign tax paid nor, in the case of foreign-sourced dividends, the underlying tax paid on the corporate profits out of which the dividend is distributed. However, the credit relief granted will include an underlying tax on the profits out of which the dividend is paid, in cases where the Mauritian resident receiving the income owns directly or indirectly at least 5% of the share capital of the paying company.

While a few of Mauritius' treaties maintain this minimum threshold of 5%, others do not provide specifically for an underlying foreign tax credit, and many others increase this minimum shareholding to 10% mostly in the case of corporate shareholders. In such cases, the unilateral relief mechanism is rendered more favourable than under the treaty.

To ensure that the tax incentives granted to attract non-resident investors for the purposes of economic development inure to the benefit of the investors and not the treasuries of their home countries, it appears to be standard Mauritian tax treaty practice to negotiate tax sparing provisions of a unilateral or reciprocal nature in its treaties with other countries. These provisions treat as paid in Mauritius the tax that is reduced or exempt in Mauritius on the Mauritian-source income derived by the foreign resident. The tax sparing provision enables the foreign resident to claim a credit in the home country for such taxes even if they are not actually paid. It ensures that the investor is the direct beneficiary of the incentive as intended, and not the treasury of its home country, which, depending on the double taxation relief mechanism it applies, may otherwise realise increased revenue collection from the taxes foregone in Mauritius.

In line with this policy, this treaty provides for the reciprocal grant of tax sparing credit in respect of taxes foregone in both States.

However, because most tax incentives in Mauritius have been abolished with effect from July 1, 2006, the impact of the tax sparing provision on Mauritian source taxes is not as significant now as it was before.

Article 24 Non-Discrimination

See treaty text

The standard provisions apply

The treaty makes no express provision for stateless persons

The majority of Mauritius' treaties do not extend the treaty benefits to stateless persons, and this treaty is no exception.

Unlike most other treaties concluded by Mauritius, this treaty follows the standard OECD provision by extending the application of the provision to all types of taxes and not only those specifically covered by the treaty.

Article 25 Mutual Agreement Procedure

See treaty text

General rules apply

No provision is made for the settlement of unresolved issues through arbitration

The treaty generally follows the OECD Model provision on this issue, except in relation to the settlement of unresolved issues through arbitration, regarding which the treaty omits the Model provision.

Although there is no explicit official statement to this effect, it appears that it is not yet Mauritius' position to negotiate the inclusion of arbitration provisions in its tax treaties. Consequently, virtually none of its existing treaties includes this provision.

Article 26 Exchange of Information

See treaty text

The treaty follows the current OECD standards governing information exchange between Contracting States

The treaty follows the current standards governing information exchange between Contracting States, including, in particular:

- the application of the exchange of information provision to, and the use of the information exchanged for the purposes of administering, all taxes imposed on behalf of both States, or of their political subdivisions or local authorities;

- the treatment of the information exchanged under the treaty, particularly the circumstances in which the received information may be shared with other persons or authorities in either State;

- limitations on the information exchange. These include, in particular, the absence of an obligation upon the State parties to go beyond what their internal laws and administrative practice permit; or to disregard the principle of reciprocity by providing information which is not obtainable under the laws or in the normal course of the administration of the requesting State; or to exchange information that would disclose a trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy;

- the supply of information by a requested State even where it does not need such information for its own domestic tax purposes; and

- the obligation of a requested State to supply information held by banks, financial institutions, nominees, agents or fiduciaries.

Mauritius has embarked upon the negotiation of specific tax information exchange agreements containing elaborate mechanisms for information exchange, particularly with countries with which it has not as yet concluded a comprehensive double taxation treaty.

Article 27 Diplomatic Agents and Consular Officers

See treaty text

The treaty follows the standard OECD Model approach toward the treatment of diplomatic and consular staff

Mauritius has acceded to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, both of which exempt diplomatic agents, as well as consular officers and consular employees and members of their families, from all taxes in the receiving state, subject to certain limited exceptions. Even in the absence of a treaty, Mauritius income tax law exempts from tax the emoluments of a foreigner who holds office in Mauritius as an official of a foreign government and is posted to Mauritius for that purpose.

Article 28 Entry into Force

See treaty text

This Article contains the rules for bringing the treaty into force and giving effect to its provisions.

Article 29 Termination

See treaty text

The treaty remains in force indefinitely until terminated by one of the States, but only after it has been in force for at least five years. The termination procedure requires the State initiating the process to give the other State advance notification in written form through diplomatic channels on or before June 30 in any calendar year.