Analysis: Belgium – Mauritius Income Treaty

See treaty text
Type of treaty: Income
Based on the OECD Model Treaty
Signed: July 4, 1995
Entry into force: January 28, 1999
Effective date: July 1, 1999. See Article 28.
This Analysis was written in January 2013 by **Jude Amos**, International Tax Consultant, Sydney, Australia.

Belgium

The treaty was approved by a law dated 10 August 1998, published in the official journal on 18 August 1998.
The treaty is commented by a Belgian administrative circular dated 27 April 2000 (reference AAF/INTER.ISR/MAURICE 98-583). It is important to keep in mind that Belgium is in the process of adopting a standard double tax treaty (latest draft published is dated July 2010, the "Belgian Standard").

Article 1 Personal Scope

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

Article 2 Taxes Covered

See treaty text

Belgium

- The individual income tax;
- The corporate income tax;
- The income tax on legal entities;
- The income tax on non-residents;
- The special levy assimilated to the individual income tax;
- The supplementary crisis contribution,

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax.

Mauritius

- The income tax

Expert Analysis

Belgium

The taxes covered are in line with the Belgian Standard, although the language used slightly differs.

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
"Belgium": the Kingdom of Belgium, that is, the national territory, the territorial sea and any other area in the sea within which Belgium exercises sovereign rights or jurisdiction in accordance with international law;
"Mauritius": the Republic of Mauritius, that is, all the territories, including all the islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius and includes 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 territorial 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 Belgium, as the context requires;

“Person”: an individual, a company and any other body of persons;
“National”: any individual possessing the nationality of that Contracting State and any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
“Company”: any body corporate or any entity that is treated as a body corporate for tax purposes and in particular a company or a trust within the meaning of the Mauritian law;
“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 having its place of effective management in a Contracting State, but not when the ship or aircraft is operated solely between places in the other Contracting State;
“Competent authority”: Belgium: the Minister of Finance or his authorised representative; Mauritius: the Minister of Finance or his authorised representative.

Belgium

The territorial scope derives from the Belgian Standard as the latter makes a clear reference to the ’air’ in the catch-all provision (including the territorial sea and any other area in the sea and in the air […])

Article 4 Resident

See treaty text

Belgium

INDIVIDUAL

Individuals who are registered in the National Register of Individuals (Registre national des personnes physiques/Rijksregister van de natuurlijke personen) are deemed to be residents of Belgium, unless they provide evidence of the contrary. The place where a taxpayer’’s household is established has repeatedly been construed by case law as a decisive factor in determining whether the taxpayer is a resident for Belgian individual income tax purposes and statute law now includes the rule that married taxpayers or legal cohabitants are deemed to have their fiscal domicile where their household is established (Article 2, paragraph 1 of the Corporate Income Tax Code).

There is also an economic test: an individual is considered to be a resident of Belgium for income tax purposes if he or she has his or her domicile or the seat of his or her wealth (*siège de la fortune/ zetel van fortuin*) in Belgium. Factual elements taken into account in determining an individual's residence for tax purposes include:

1. The place where the individual has a permanent home available to him or her;
2. The place where the individual's household is maintained;
3. The place with which the individual's personal links are closest; and
4. The place where the individual has the centre of his or her economic interests and the centre of his or her wealth.

COMPANIES

A company will be resident if it has its statutory seat, principal establishment or its seat of management or administration in Belgium.

A company will be resident if it has its registered seat, main establishment or its place of management or administration in Belgium (Article 2, 5°, b of the CIT code).

PARTNERSHIP AND FISCALLY TRANSPARENT ENTERPRISES

Entities without separate legal personality are not subject to corporate income tax. Such entities include:

1. Civil companies which have not adopted the form of commercial companies;
2. Temporary company (*société momentanée/tijdelijke venootschap*) formed for the purpose of carrying out one or more specific operations; and
3. “Undisclosed” associations, i.e. associations between persons who manage operations in their own name and undisclosed persons who have an interest in such operations (*société interne/interne venootschap*).

In addition, certain entities that have legal personality for company law purposes are deemed not to have a separate legal personality for the application of income taxes (i.e. agricultural companies that have not elected to be subject to corporate income tax, EEIGs and EIGs,).

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 2 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 société) is resident in Mauritius if it has its seat or siège in Mauritius, and also includes a partnership which has at least one associate or associé or gérant 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 other persons; and
- a farm or a plantation.

Building sites, construction or installation projects, and supervisory activities in connection therewith, constitute a permanent establishment if they last more than 6 months.

The combination of preparatory or auxiliary activities will still not be considered to constitute a permanent establishment.

Belgium

The definition of permanent establishment under the treaty is not in line with the Belgian Standard and with the OECD MC. As an example, the building site provision under Belgian Standard provides for the existence of a permanent establishment for building site, construction, and installation project if it lasts more than 12 months whilst the treaty provides for a period of six months (and includes the related supervisory activities). Further, warehouse in relation to a person providing storage facilities for other persons is considered as a permanent establishment under the treaty, as well as a dependent agent having no authority to bind but habitually maintains a stock of goods from which he deliver goods on behalf of the enterprise.

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.
Belgium
The treaty does not expressly extend the benefit of this provision to income from agriculture or forestry, as provided under the Belgian Standard.

Article 7 Business Profits

See treaty text
Distinct and separate enterprise approach
Apportionment of total profits permitted
Adopts the UN Model provision in relation to the deduction of expenses.
Same profit attribution method to be used each year
Expert Analysis
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, except that it includes the UN Model provision governing the deduction of expenses in computing the profits of a permanent establishment (deduction of expenses, including executive and general administrative expenses).
Further, this Treaty permits an allocation of the profits of the enterprise to a permanent establishment based on an apportionment of the total profits of the enterprise. This is sometimes known as the unitary, or indirect method of apportionment. It is only acceptable to use this method if it has been customary to do so and in any case, the outcome must be in accordance with the result which would be obtained by using the Authorised OECD Approach (AOA).
Belgium
Belgium broadly follows the OECD guidelines using the distinct and separate enterprise approach. The Belgian Standard does not refer to the apportionment.
Belgium revised its domestic law in 2006 to permit a notional interest deduction based on a percentage of the (adjusted) companys equity (share capital plus retained profits). This deduction may be claimed by non-resident companies proportionately in computing profits attributable to their Belgian permanent establishments. The deduction is determined by reference to the return on government bonds, with a cap (currently 3% for companies other than SMEs).
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

Follows the standard OECD Model provision regarding the place of taxation.
Occasional incidental profits from ship, aircraft and container rentals included.
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.

Expert Analysis

The treaty follows the standard OECD Model provision regarding the place of taxation (i.e. only in the State in which the place of effective management of the enterprise is situated).
Consistent with the Commentary on the OECD Model, the concept of profits is construed to include occasional profits from the rental of ships and aircraft, and from the use or rental of containers, if the profits are incidental to the profits from shipping and aircraft operations.
The treaty also follows the common approach in Mauritius' and Belgium 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 contains no paragraph providing for secondary adjustments

Expert Analysis

The treaty adopts the standard OECD Model paragraph regarding the application of the arm's length principle to associated enterprises.
However, the treaty omits the second paragraph of the OECD Model, which provides for a secondary adjustment to be made by the other Contracting State following the initial adjustment in accordance with the first paragraph. This means that relief for any double taxation arising as a result of the initial adjustment may have to be obtained in accordance with the mutual agreement procedure.

Belgium

The Belgian Standard goes beyond the OECD MC 2010 as in addition to secondary adjustment, it also contains some anti-avoidance rules precluding the application of a secondary adjustment in case of fraudulent transactions, as recognised by an administrative or judicial decision.

Article 10 Dividends

See treaty text

Treaty rate: 5% if the beneficial owner is a company (other than a partnership in the case of Mauritius) which holds directly or indirectly at least 10% of the capital of the company paying the dividends;
10% in all other cases

Expert Analysis

Belgium

Belgian domestic exemption applies if foreign parent holds at least 10% interest during at least one year incorporated in a country having concluded a double tax treaty with Belgium. There is a one-year minimum holding period but relief from withholding tax may be claimed in advance of this requirement being met.
A participation exemption applies to dividends received by companies residing in Belgium. Provided that the Belgian beneficiary meets the holding conditions (i.e., a one year holding period (or a commitment to hold for one year) and a shareholding of at least 10%, or €2.500.000 acquisition cost), any dividend received should be exempt at 95% from Belgian tax.
Under the Belgian Standard, dividend are not taxed in Belgium when paid to the beneficial owner of the dividend in the other contracting state as long as the latter holds at least 10 percent of the capital of the company paying the dividends for an uninterrupted period of at least twelves months. Further, dividends payments to pension funds are also no taxed in Belgium, irrespective of the holding percentage and the period. In other cases, Belgium would typically seek apply a 15% withholding tax in its treaties, under the Belgian Standard.

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:

Belgium

Under Belgium domestic laws interest is subject to a 25% withholding tax. Several reduced rates and exemptions apply. Amongst the most common exemptions are for bonds where the investor is registered with the Issuer and interest payable to a financial institutions located in a country having concluded a double tax treaty with Belgium.

Mauritius

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

Expert Analysis

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 derived by the government or its agencies.

This treaty also exempts from tax the following types of interest:

- interest on commercial debt-claims, including debt-claims represented by commercial paper, resulting from deferred payments for goods, merchandise or services supplied by an enterprise;

- interest that is paid in respect of a loan or a credit that is extended, guaranteed or insured by public entities set up for the promotion of exports;

- interest on loans that are not represented by bearer instruments, which are granted by a banking enterprise; and

- interest on deposits with a banking enterprise that are not represented by bearer instruments.

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: exempt

Domestic rates:

Belgium

The provision is merely in line with the Belgian Standard (including the definition of royalty), with the exception of the absence of anti-avoidance rule in this treaty (compared to the Belgian Standard) and the fact that the treaty excludes the benefit of the exemption to situations where independent personal services are performed from a fixed base and the right to the royalties are connected to with such fixed base.

The withholding tax on royalties is 25% on the gross amount (or 15% for income from author's and neighbouring rights and from legal and compulsory licenses), but reduced by a standard expense deduction of 15%.

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.

Unlike many other treaties concluded by Mauritius, the treaty follows the OECD Model on this issue by completely exempting royalties from source State taxation.
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 other works recorded for radio or television broadcasting.

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.
The treaty adopts the OECD Model provision applicable to gains from the alienation of ships and aircraft but omits reference to boats engaged in inland waterways transport.

Belgium

Belgium charges its non-resident income tax on gains on disposals of immovable property situated in Belgium. Under certain circumstances non-resident individuals could also be charged on gains on sales of shares in Belgian resident companies. This is however largely overruled in Treaty context (given the fact that Belgium shall not be entitled to tax that income according to most Treaties devolution's rules, in line with the Belgian Standard).
For Belgian companies, provided that the Belgian company meets a one year holding period in respect of the Mauritius subsidiary, any net gain made on a disposal should be exempt. A special tax amounting to 0.412% of the exempt capital gain will apply if the selling company is a company other than a SME. Further, if the one year holding condition has not been fulfilled the capital gain will be taxable at a 25.75% special rate.

Mauritius

Like most of Mauritius' treaties, the treaty does not deal specifically with the issue of the tax treatment of shares whose underlying assets consist mainly of immovable property situated in a Contracting State
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 realizing such gains in Mauritius. As in the case of dividends, the treaty provisions are of greater importance to Mauritian residents realizing 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 earlier OECD Model version, which was modified 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).
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.

Belgium

The Belgium Standard does not provide for such specific provision and Article 14 of the OECD MC is now deleted.

Article 15 Dependent Personal Services

See treaty text

The general rule applies.
The treaty generally follows the OECD Model and the Belgian Standard. However, it omits reference to the exercise of employment aboard a boat engaged in inland waterways transport, in line with the other provisions of this treaty excluding inland waterways transport.

Article 16 Company Managers

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. Note that the treaty also covers payments derived by the resident in his capacity as a member of any other organ similar to that of a board of directors of a company.

Belgium

The treaty provision is in line with the Belgian Standard.

Mauritius

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 Sportsmen

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.

Belgium

Belgian Standard contains a specific clause regarding the determination of the taxable income, which is not incorporated in this treaty.

Mauritius

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.

Source State taxation of payments under the public social security scheme of that State.

Definition of the term “annuity”

The treaty follows the OECD Model provision governing the taxation of pensions and similar remuneration, which is extended to cover annuities. 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 political subdivisions or local authorities.

Furthermore, the treaty includes a definition of the term “annuity”, as referring to “a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.”

This provision is not following the Belgian Standard and uses specific concepts that are not retained by such standard.

Article 19 Government Service

See treaty text

OECD Model and Belgian Standard provisions 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 characterization 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.
A teacher or researcher normally resident in one State may visit the other State for a period of up to two years in order to teach or carry on research in a university or other officially recognized institution.
The remuneration derived from such activities is exempt from taxation in the host State.
To benefit from such tax treatment, the visit must be at the invitation of the hosting institution.
However, the treaty provision does not apply if the activity is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.
The Belgian Standard does not include similar provision.

Article 21 Students and Business Apprentices

See treaty text

General rule applies.
A student or business apprentice 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;

- remuneration, not exceeding in any calendar year 150,000 Belgian francs (equivalent of circa EUR 3,720) or the equivalent of that amount in Mauritian currency, derived from an employment exercised in the State in connection with his education or training, for during the normal duration of this education or training, which may not exceed seven consecutive years (in the case of a student) or three consecutive years (in the case of a business apprentice).

The latter provision is a clear deviation from the Belgian Standard.

Article 22 Other Income

See treaty text

Taxation only in the State of residence but source State taxation permitted if income is not taxed in the residence State
The treaty follows the standard OECD Model provision, which assigns exclusive jurisdiction to tax such income to the State of residence. However, it permits the source State to tax such income if it is not subject to tax in 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). This is a deviation from the Belgian Standard.

Article 23 Methods for Elimination of Double Taxation

See treaty text

Belgium

Except for income in excess of arm's length amounts, Belgium uses the exemption method for income other than interest or royalties.

Belgium will take into account any income exempted under this Treaty from Belgian tax in determining the rates of tax to be applied to income remaining taxable in Belgium (exemption with progression).

This shall not apply to profits which a resident of Belgium derives from a permanent establishment situated in Mauritius and which have been taxed in Mauritius but at a lower rate than 25 percent.

The credit method is applied to interest and royalties. Dividends received by Belgian companies from Mauritius companies are exempt provided conditions are met. A participation exemption applies to dividends received by companies residing in Belgium. Provided that the Belgian beneficiary meets the holding conditions (i.e., a one year holding period (or a commitment to hold for one year) and a shareholding of at least 10%, or €2.500.000 acquisition cost), any dividend received should be exempt at 95% from Belgian tax.

Where losses incurred by a permanent establishment of a Belgian company have been used to reduce Belgian tax, then an equivalent amount of future profits of the permanent establishment will be taxable in Belgium rather than being exempt.

The Belgian Standard contains more sophisticated clauses, including switch over from exemption to credit for dividends in specific circumstances.

Mauritius

Credit method; but:

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

Expert Analysis

Mauritius

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.

Article 24 Non-Discrimination

See treaty text

The standard provisions apply.

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.

To the contrary, such clause is present in the Belgian Standard but not applied in this treaty.

Article 26 Exchange of Information

See treaty text
The treaty follows the former OECD standard governing information exchange between Contracting States.
The treaty follows an earlier version of the exchange information article and thus does not conform to the current international standard on information exchange, in particular, in:

- restricting the obligation to exchange information to taxes covered by the treaty;

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

- not including the specific obligation of a requested State to supply information held by banks, financial institutions, nominees, agents or fiduciaries.

However, in pursuance of its commitment to bring its tax treaty standards in line with the current international standard on information exchange, Mauritius has embarked upon the negotiation of amending protocols to existing treaties that still reflect the "old" standard on information exchange. It is thus expected that the provisions governing the exchange of information in this treaty will in due course be amended to achieve conformity with the established international standard.
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 Members of Diplomatic Missions and Consular Posts

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 at least six months before the end of any calendar year.