# Analysis: Italy – Mauritius Income Treaty

See treaty text
Type of treaty: Income
Based on the OECD Model Treaty
Signed: March 9, 1990
Entry into force: April 28, 1995
Effective date: July 1, 1987. See Article 29.
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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
**Italy**
The Treaty covers the following taxes, whether or not they are collected by withholding at source:
(1) personal income tax (imposta sul reddito delle persone fisiche - IRPEF), a progressive tax applied at marginal rates currently ranging between 23% and 43% (plus a surcharge generally applied at rate up to 3.43%);
(2) corporate income tax (imposta sul reddito delle persone giuridiche - IRES), which is normally levied at a rate of 27.5%;
(3) regional tax on productive activities (imposta regionale sulle attivita produttive - IRAP), which is levied on entities (including companies and partnerships) and individuals engaged in business and professional activities under certain conditions. The regional tax on productive activities is currently levied at a rate that can vary up to 5.9%, depending on the region where the income is produced.
Although paragraph (3) of Article 2 extends the applicability of the Treaty to "similar taxes", it does so only with respect to similar taxes imposed subsequent to the signature of the Treaty: in this case any changes should be communicated by the Contracting State.
**Mauritius**
The income tax;
The capital gains (morcellement) tax; including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes
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. Although capital gains tax is also listed as covered by the treaty, Mauritius has since the conclusion of the treaty abolished the existing tax on such gains.

## Article 3 General Definitions

See treaty text
"Italy": the Republic of Italy, including any area beyond the territorial waters of Italy which, in accordance with the laws of Italy concerning the exploration and exploitation of natural resources may be designated as an area within which Italy may exercise its rights with respect to the seabed and subsoil and natural resources may be exercised;
"Mauritius": all the territories, including all the islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius, including:
- the territorial sea of Mauritius;

- an area outside the territorial sea of Mauritius which in accordance with the laws of Mauritius is designated as an area within which the rights of Mauritius with respect to the seabed and subsoil and their natural resources may be exercised.

"A Contracting State" and "the other Contracting State": Mauritius or Italy, as the context requires;
"Person": an individual, a company and any other body of persons;
"Nationals": all individuals possessing the nationality of a Contracting State and all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
"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 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”:
in Italy: the Ministry of Finance;
in Mauritius: the Commissioner of Income Tax or his authorised representative.
Italy reserved in the OECD Commentary the right not to include the definitions of “enterprise” and “business” and to include an article concerning the taxation of independent personal services. Relevant provisions have been set out in article 14 of the Treaty.

## Article 4 Resident

See treaty text

**Italy**

INDIVIDUALS
Individuals resident in Italy for tax purposes are subject to IRPEF on their aggregate worldwide income.
An individual is deemed to be resident in Italy for tax purposes (whether nationals or not) if, for the greater part of the tax period (i.e. more than 183 days per calendar year), the individual is registered in the civil registry or is resident or domiciled in Italy for civil purposes.
The domicile of an individual is the place where he has established the principal centre of his business and interests (i.e. centre of vital interests); his residence is where he has his habitual abode.
CORPORATIONS
Companies resident in Italy for tax purposes are subject to IRES on their worldwide income and IRAP on their Italian source income (to be calculated according to specific rules).
A company is deemed to be resident in Italy if for the greater part of the financial year (more than 183 days) it has there its legal seat (sede legale), the place of effective management (sede dell'amministrazione) or the main business purpose (oggetto principale dell'attivita). The place where the company was incorporated is not relevant.
The legal seat is the place indicated in the company's articles of association or by-laws. The place of effective management is the place from where the main decisions about management of the company are taken. The main business purpose is the purpose indicated in the articles of incorporation or, if this document is not in the form of public deed or notarised deed, the main business purpose resulting from the actual activities of the company.
Further, according to domestic legislation, there are presumptions of law according to which a foreign company is deemed to be tax resident in Italy (unless proof to the contrary is provided):
1. if this foreign company:
(i) controls an Italian company (i.e. may exercise “relevant influence”) and
(ii) is, in turn, directly or indirectly controlled by an Italian resident person (company or individual); or
(iii) the majority of the management board or other governing body is constituted by Italian resident persons.
2. if the foreign company:
(i) has assets mainly represented by units of Italian closed-ended real property funds (fondi di investimento immobiliare); and
(ii) is, in turn, directly or indirectly controlled by an Italy-resident person (company or individual).
The tie break rule sets out by this Article in relation to the tax residence of companies (and all persons other than individuals) follows the rule of article 4(4) of the OECD Treaty Model. Accordingly, companies are deemed to be resident in the State where their place of effective management is situated.
Please note that the tie break rule will also apply in relation to the above presumptions of law regarding tax residence, whereby the “proof to the contrary” (i.e. that an entity is not tax resident in Italy) will be the proof that the company is actually managed in the foreign jurisdiction.
TRUST
A trust is considered resident for tax purposes in Italy if its legal seat, place of effective management or main business purpose is in Italy for the greater part of the financial year (more than 183 days).
Further, trusts established in jurisdictions other than those with which Italy has an adequate exchange of information system (so-called ‘white listed countries’; please note that Mauritius is a white-listed

country for tax purposes) are deemed to be resident in Italy (unless proof to the contrary is provided) if:
1. at least one of the settlors and at least one of the beneficiaries are resident in Italy; or
2. after their settlement, a resident person makes a contribution of immovable property or rights thereon in favour of the trust.
If the beneficiaries of a trust are identified, the trust is considered as a transparent entity and is not subject to corporate income tax. In this case, the beneficiaries of the trust are taxed on their share of the trust's profits.
PARTNERSHIP
Italian legislation governs several types of partnership: i.e. the simple partnership (societa semplice), the general partnership (societa in nome collettivo), and the limited partnership (societa in accomandita semplice). Partnerships limited by shares (societa in accomandita per azioni) are treated as corporations for tax purposes (see above).
Partnerships (other than partnerships limited by shares - societa in accomandita per azioni) are considered as transparent entities for tax purposes and are not subject to Italian corporate income tax. Rather, the partners of these partnerships are taxed on their share of the partnership's profits. As a consequence, Italian partnerships are generally not deemed eligible for the Treaty provisions.
FUNDS
*Investment funds*
Open-ended investment funds investing in securities (fondi comuni di investimento mobiliare aperti), closed-ended investment funds investing in securities (fondi comuni di investimento mobiliare chiusi) and SICAVs (collective investment vehicles in the form of a corporation whose capital amount is not fixed but can vary according to increases or decreases in the number of subscribers) as well as closed-ended investment funds investing in immovable property (fondi comuni di investimento immobiliare chiusi) set up in Italy are deemed to be resident in Italy for tax purposes.
These investment funds are subject to IRES, but they are fully exempt from this tax (taxation is applied in the hands of the participants upon distributions or realization of the investments).
The above investment funds are not subject to IRAP.
In view of the above, from Italian standpoint, the Treaty provisions are in principle applicable to the above Italian investment funds.
*Pension funds*
Pension funds are not subject to ordinary IRES and IRAP. However, they are subject to a substitute tax of 11% on the yearly net result. The Italian tax authority is inclined to apply tax treaty provision to Italian pension funds.
**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 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

The concept of permanent establishment under the Treaty includes a building site or construction or assembly project, which exist for more than six months.
A fixed place of business used for a combination of preparatory or auxiliary activities is not expressly excluded from the concept of a permanent establishment.
With regard to the personal permanent establishment concept, the Treaty lays down a number of cases where a person - other than an independent agent - constitutes a permanent establishment, amongst others,
(a) if he has, and habitually exercises in the Contracting State an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
(b) if he habitually maintains in the Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise.
The Treaty expressly clarifies that an agent who devotes his exclusively or almost exclusively on behalf of a foreign enterprise does not have independent status.
**Italy**
The concept of "permanent establishment" is set out by law and follows the wording of Article 5 of the OECD Treaty Model, with the following deviations:
(a) computers and auxiliary equipment for the collection of information and the transmission of data for the sale of goods or services do not by themselves constitute a permanent establishment;
(b) an agent (other than a broker, commission agent or any other independent agent acting in the ordinary course of his business) who habitually concludes contracts in the name of a non-resident constitute a permanent establishment of the non-resident, unless the agent's activity is limited to the purchase of goods;
(c) maritime trade agents or trade brokers entitled to manage vessels of non-residents do not by themselves constitute a permanent establishment; and
(d) a building site, construction, assembly or installation project or supervisory activities connected therewith, constitute a permanent establishment provided such site, project or activity continues for a period of more than three months.
Further, Italian legislation provides for an exclusion from the concept of permanent establishment where a fixed place of business is used for a combination of preparatory or auxiliary activities.
According to Italian legislation, domestic provisions may override Treaty rules if the former are more favourable to the taxpayer than these latter.
Considering the wording of this Article 5, the domestic concept of permanent establishment might be more favourable than that set out in the Treaty in relation to the exclusions laid down by domestic legislation under (a) and (c) above. Further, it might be the case in relation to the exclusion from the

concept of a permanent establishment where a fixed place of business used for a combination of preparatory or auxiliary activities, which is not contemplated in the Treaty.
*Italian case law- Philip Morris Case*
With Decision No 7682 of 25 May 2002 (so-called Philip Morris Case), the Italian Supreme Court (Corte di Cassazione) outlined some principles to ascertain whether a permanent establishment is deemed to exist in Italy. Subsequent decisions of the Supreme Court are essentially in line with the principles set out in the above decision.
The decisions of the Supreme Court are crucial since Italy has reserved in the OECD Commentary that with respect to paragraph 5 and 7 of Article 5 of the OECD Treaty Model, Italian jurisprudence is not to be ignored in the interpretation of cases falling in these paragraphs.
The principles set out by the Supreme Court may be summarised as follows:
(a) when a group pursues a global strategy involving a number of non-Italian group companies, the related Italian subsidiary can assume the role of a multiple permanent establishment. The subsidiary's activities should be carefully analysed to ascertain whether they could be viewed as being of a "preparatory or auxiliary character" in respect of the group's business as a whole;
(b) supervision of a performance of a contract cannot, in principle, be considered as an activity of a preparatory or auxiliary character;
(c) if an Italian entity is delegated to manage the business of the group in a certain area, this activity may result in the existence of a permanent establishment in that area;
(d) a direct participation in contract negotiations may be assimilated to the authority to conclude the contract; and
(e) a "substance over form" approach is required to ascertain whether a permanent establishment exists.
**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.
Reservations were made by Italy to the right to tax persons performing independent personal services under a separate article which corresponds to Article 14 of the OECD Treaty Model as it stood before its elimination in 2000.

## 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.
TheTreaty adopts the distinct and separate enterprise approach to the taxation of a permanent establishment contained in the OECD Model (2008).
Paragraph 3 of this Article allows for deductions of expenses that are incurred for the purposes of the PE including executive and administrative expense so incurred by the PE. This is in line with the UN model and not specifically so in the OECD model.
On other issues, the Treaty generally follows the OECD Model (2008) provisions in this area.
**Italy**
Italy adopts the "separate entity" approach to determine the profits attributable to a permanent establishment. Accordingly, the permanent establishment must be treated as a separate and independent enterprise in its dealings with the other parts of the enterprise.

The income attributable to a permanent establishment in Italy of a non-resident enterprise should be computed on the basis of the same rules applicable to resident companies: the permanent establishment has therefore to draft separate profit and loss accounts in respect of headquarters.
Domestic legislation sets out a limited "force of attraction". As a result, income from assets not effectively connected to a permanent establishment should not generally be treated as business income attributable to the permanent establishment, but retain its nature and is taxed accordingly.
However, capital gains realised in Italy by a non-resident person from assets relating to business activity and dividends declared by Italian companies, may be subject to taxation as business income if this persons has a permanent establishment in Italy, although these assets are not effectively connected to this permanent establishment. Tax authorities seem however inclined to extend the "force of attraction" to other items of income if the foreign entity has a permanent establishment in Italy.
In this respect, the Treaty makes clear that if an enterprise carries on business through a permanent establishment situated in Italy, the profit of the enterprise may be taxed in Italy only so much as is attributable to that permanent establishment.

**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.
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.
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).
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 provision regarding transfer pricing
Arm's length principle applies in dealings between associated enterprises
The Treaty contains no paragraph providing for secondary adjustments.
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. In this respect, according to the reservation made by Italy within the OECD Commentary, and enforced here, a State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, and only in accordance with the mutual agreement procedure provided for by Article 25 of the Treaty.
The OCSE Transfer Pricing Guidelines (2010) have been implemented in Italy and therefore govern cross-border transactions amongst associated companies.
Domestic rules on transfer pricing matters have, however, a very broad scope. In particular, Italian tax authorities have clarified that the concept of "Italian enterprise" - to which the transfer pricing

rules apply - should also include any unincorporated businesses and also the Italian permanent establishments of foreign companies.

## Article 10 Dividends

See treaty text

Treaty rate: 5% if the recipient is a company (excluding partnerships) which owns directly at least 25% of the capital of the company paying the dividends;
15% in all other cases

Domestic rates:

**Italy**

Dividends paid by Italian resident companies to non-resident individuals and companies without a permanent establishment in Italy are normally subject to a final withholding tax, generally levied at 20% tax rate. If dividends are received through a permanent establishment in Italy, they are taxed as if received by an Italian resident company (i.e. no withholdings would apply).

According to domestic legislation, if the withholding tax applies, and it can be shown that tax has been paid on the same dividends in the recipient's country of residence, a refund up to one fourth (four ninths before 1 January 2012) of the withholding tax may be claimed.

**Mauritius**

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

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: No limit

Domestic rates:

**Italy**

In general, interest payments to non-resident persons are subject to a final withholding tax at rate of 20%. A 12.5% rate applies to interest on state bonds and other public bonds (private bonds issued before 1 January 1997 may be subject to other rates).

However, no withholding tax applies on interest paid to a non-resident person on (i) deposit accounts and current accounts with banks and post offices, and (ii) bonds issued by the state, banks or listed companies and under certain conditions, bonds listed in qualified EU regulated markets and/or white-listed countries of the European Economic Area, if the beneficial owner is resident in a country with which Italy has an adequate exchange-of-information system, as is the case with Mauritius. In order to benefit from the exemption the non-resident must deposit the bond with a resident bank or other qualified intermediary.

Please note that proceeds paid out from Italian investment funds are generally qualified as interest pursuant to domestic legislation.

**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 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: 15% maximum

Domestic rates:

**Italy**

Royalty payments to non-residents are subject to a 30% withholding tax, which is generally applied to 75% of the gross amount of the payment, resulting in an effective rate of 22.5%. However, if the

recipient is not the author or the inventor and the underlying right was acquired without consideration, the tax is applied to the whole amount of the royalties.

**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:

- tapes for television or 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.

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.

**Italy**

According to domestic legislation, income and capital gains from immovable property realised by a non-resident person (without permanent establishment or fixed base in Italy) are taxable if the property is situated in Italy. However, such capital gains are subject to corporate income tax only if the sale takes place within 5 years from the purchase or construction of the immovable property.

With reference to capital gains from disposal of shareholdings by a non-resident person:

(i) disposal of qualifying shareholdings in Italian listed companies is not regarded as Italian-source income;

(ii) disposal of qualifying shareholdings (regardless whether in listed companies or not) is generally tax exempt if realized by a person resident in a white-listed country (as Mauritius is);

(iii) in other cases, disposal of shareholdings in Italian companies would trigger taxation in Italy.

A qualifying shareholding is where the amount of participation sold during a 12-month period does not exceed 20% of the voting rights or 25% of the capital (respectively 2% of the voting rights or 5% of the capital of listed companies).

**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 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 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.

## Article 15 Dependent Personal Services

See treaty text

The general rule under the OECD Treaty Model applies.
Given the lack of express definition of "income from employment" the domestic definition of source State should be taken into account.
The Treaty generally follows the OECD Model. However, it omits reference to the exercise of employment aboard a boat engaged in inland waterways transport.

**Italy**

Under certain circumstances, the income from employment (other than that exercised on boats flying non Italian flags) in the hand of a resident person who operate for more than 183 days outside of Italy, is computed on the basis of standard remunerations, which are determined by laws (i.e. regardless the amounts actually received by the employee).
Further, domestic legislation exempts from individual income tax the income of employment exercised for more than 183 days in a 12 month period on boats flying a non-Italian flag.

## Article 16 Directors' Fee

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.
TheTreaty 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.
The Treaty provision is also in line with Italian domestic legislation.

## Article 17 Artists 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. Taxation by the source State if the income is not taxable in the State of residence.
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, where the income is not taxable in the State of residence, the treaty permits the source State to exercise its right to tax it.

## 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 Professors and Teachers

See treaty text

Exemption on remuneration from teaching or research activities conducted in the host State.
A professor or teacher 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, college, school or other educational institution.
The remuneration derived from such activities is exempt from taxation in the host State, provided it is taxable in the State of residence.
However, the treaty provision does not apply if the activity is undertaken primarily for the private benefit of a specific person or persons.

## Article 21 Students

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 payments received for the purpose of his maintenance, education or training, provided the payments are from a foreign source.

## 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 domestic law of the State in which the fixed base is situated.

## Article 23 Elimination of Double Taxation

See treaty text

**Italy**

Credit method
Pursuant to Italian domestic legislation, unilateral double tax relief in the form of an ordinary credit is available for foreign-source income that has been subject to tax abroad. The credit is calculated on a per-country basis.
In particular, taxes definitively paid abroad on income included in the worldwide income may be credited against Italian income tax up to the amount of Italian tax corresponding to the foreign income. The tax credit must be claimed in the tax return for the year in which the foreign tax is paid. Excess foreign tax credits relating to the income of a foreign permanent establishment or a non-resident company included in the worldwide consolidated income according to Italian worldwide fiscal unit rules, may be carried back and forward for eight tax years.
Tax credit relief under the Treaty is generally more flexible than the domestic one (which requires e.g. that foreign taxes are definitely paid abroad). According to general principles, if application of domestic rules results to be more favourable than the application of conventional rules, the taxpayer could opt for the application of the domestic provisions (instead of the conventional provisions).
**Mauritius**
Credit method
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
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
General rules apply
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 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 29 Entry into Force

See treaty text

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

## Article 30 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.