

Analysis: Mauritius – Singapore Income Treaty

[See Treaty Text](#)

Type of Treaty: Income

Based on the OECD Model Treaty

Signed: August 19, 1995

Entry into force: June 7, 1996

Effective date: July 1, 1997. 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](#)

Singapore

The income tax

Mauritius

The income tax

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](#)

"Singapore": The Republic of Singapore

"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 adjacent to 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 natural resources of sea, the sea-bed and sub-soil may be exercised;

"A Contracting State" and "the other Contracting State": Mauritius or Singapore, as the context requires;

"Person": an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes;

"National": any individual having the nationality or citizenship of that Contracting State and any legal person, partnership or association or other entity deriving its status 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;

"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;

"Tax": Mauritius tax or Singapore tax as the context requires;

"Competent authority": in Singapore: the Minister for Finance or his authorised representative; in Mauritius: the Minister of Finance 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 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 an installation or structure used for the exploration of natural resources but only if so used for a period of more than nine months.

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

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](#)

Income from the operation of aircraft are taxable only in the State of the enterprise. Income from the operation of ships may be taxed in the State of source, but the tax payable is to be reduced by 50 percent.

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 the OECD Model, the treaty provides separately for the taxation of income from the operation of ships and aircraft. Income from the operation of aircraft is taxable only in the State of the enterprise, while income from the operation of ships may be taxed in the State of source, but the tax payable is to be reduced by 50%.

Consistent with the Commentary on the OECD Model, the concept of profits is construed to include those derived from the lease of ships or aircraft and from the use, maintenance or rental of containers (including trailers and related equipment used for transporting the containers).

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

Initial adjustment in accordance with the arm's length principle

Secondary adjustment if the competent authorities have so agreed.

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

The treaty explicitly makes the secondary adjustment conditional upon the prior agreement of the competent authorities.

Article 10 Dividends

[See treaty text](#)

Treaty rate: exempt

Domestic rates:

Singapore

No withholding tax.

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: exempt

Domestic rates:

Singapore

Subject to a 15% withholding tax.

Mauritius

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

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:

Singapore

Subject to a 10% withholding tax.

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:

- films, tapes or discs for radio or television broadcasting;
- a computer programme; 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.

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](#)

General rule applies

Expert Analysis

The treaty generally follows the OECD Model. However, it omits reference to the exercise of employment aboard a boat engaged in inland waterways transport.

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. 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 Entertainers 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.

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 political subdivisions, local authorities or statutory bodies.

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. Under the treaty, similar payments made by a statutory body of a State are subject to the same tax treatment.

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 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.

However, the treaty provision does not apply if the activity is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

Article 21 Students and Trainees

[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 by the source State.

Unlike most of Mauritius treaties, this treaty only provides for jurisdiction to tax other income by the source State.

Article 23 Elimination of Double Taxation

[See treaty text](#)

Singapore

Credit method; but:

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

Tax sparing credit

Mauritius

Credit method; but:

An underlying tax credit will be granted for dividends paid by a Singapore-resident company to a Mauritian-resident company with a direct or indirect holding of at least 10% of the capital of the Singapore 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, but is limited to a 10 year period, unless specifically extended. 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 non-discrimination provision applies only to taxes covered by the treaty.

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

As an additional restriction upon the scope of application of the non-discrimination provision under this treaty, the taxes to which it applies is confined to those covered by the treaty, a position that is followed in most of the treaties concluded by Mauritius.

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 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 28 Entry into Force

[See treaty text](#)

The 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.