

Analysis: Mauritius – Sweden Income Treaty

[See treaty text](#)

Type of Treaty: Income

Based on the OECD Model Treaty

Signed: April 23, 1992

Entry into force: December 21, 1992

Effective date: July 1, 1993. See Article 27

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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](#)

Sweden

- The State income tax (den statliga inkomstskatten), including the sailors' tax (sjmansskatten) and the coupon tax (kupongskatten);
- The special income tax on non-residents (särskild inkomstskatt för utomlands bosatta);
- The special income tax on non-resident entertainers and artistes (särskild inkomstskatt för utomlands bosatta artister m.fl.); and
- The communal income tax (den kommunala inkomstskatten)

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](#)

"Sweden": the Kingdom of Sweden (1992) , that is, including the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden exercises sovereign rights or jurisdiction in accordance with international law;

"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; and
- any area outside the territorial sea of Mauritius which in accordance with international law is designated, under the laws of Mauritius relating to the continental shelf as an area 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 Sweden, as the context requires;

"Person": an individual, a company and any other body of persons;

"National": any individual who is a citizen of either Contracting State and any legal person, partnership or association or other entity deriving its status from the laws in force in either 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 of a Contracting State, but not when the ship or aircraft is operated solely between places in the other Contracting State;

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

"Competent authority": in Sweden: the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Convention;

in Mauritius: the Minister of Finance, the Commissioner of Income Tax or his authorised representative.

Article 4 Resident

[See treaty text](#)

Mauritius

INDIVIDUALS

Individuals resident in Mauritius are taxed on their worldwide income. However, certain specific exemptions from tax are provided under the Income Tax Act.

An individual is treated for tax purposes as being resident in Mauritius in a particular tax year if the individual:

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

CORPORATIONS

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

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

PARTNERSHIPS

A partnership (otherwise referred to as a 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 others;
- an installation or structure used for the exploration of natural resources provided that the installation or structure lasts for a period of not less than six months; and
- a farm or plantation.

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

However, profits derived by an agricultural, forestry or plantation enterprise are to be treated in accordance with the treaty provisions governing business profits.

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

Adopts the UN Model provision in relation to the deduction of expenses

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, except that it includes the UN Model provision governing the deduction of expenses in computing the profits of a 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](#)

Taxation in the State of residence of the enterprise.

No express requirement for taxation of profits relating to boats engaged in inland waterways transport only in the State in which the place of effective management is situated.

Unlike in the OECD Model, the profits are taxable in the State of residence of the enterprise and not the place of effective management of the enterprise.

The treaty also follows the common approach in Mauritius' treaties of omitting the provisions dealing with the tax treatment of profits from inland waterways transport.

Article 9 Associated Enterprises

[See treaty text](#)

Usual OECD provisions regarding transfer pricing

Arm's length principle applies in dealings between associated enterprises

Initial adjustment in accordance with the arm's length principle.

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

Article 10 Dividends

[See treaty text](#)

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

15% in all other cases

Domestic rates:

Sweden

Subject to a withholding tax of 30%. Substantial exceptions apply.

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 rates: 15% maximum

Domestic rates:

Sweden

No withholding tax.

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:

Sweden

No 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.

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

The scope of royalties under the treaty is broader than under the OECD Model, in that it covers payments for the use of, or the right to use films or tapes or works recorded for radio and 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.

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

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). Alternatively, the individual becomes taxable in the State if he is present in that State for a period or periods exceeding in the aggregate 183 days in any 12-month period.

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

Article 15 Dependent Personal Services

[See treaty text](#)

General rule applies

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

Article 16 Directors' 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, Annuities and Similar Payments

[See treaty text](#)

Exclusive taxation by the State of source.

Definition of the term "annuity"

Unlike the OECD Model, the treaty provides for taxation of pensions and annuities by the source State. 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."

Article 19 Governmental Functions

[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 public 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 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 21 Income Not Expressly Mentioned

[See treaty text](#)

Taxation only in the State of residence where the person is taxable in that State on such income.

The treaty follows the standard OECD Model provision, which assigns exclusive jurisdiction to tax such income to the State of residence. However, it makes it subject to the condition that the person is subject to tax in that State.

The treaty also adopts the standard OECD Model provision regarding the exception to the jurisdictional principle stated above, where the income is associated with the activity of a permanent establishment which the resident deriving the income has in the other Contracting State, in which case it is to be

treated as taxable in accordance with the treaty provisions governing business profits. Under the treaty, a similar exception exists for income associated with a fixed base from which the resident performs independent personal services. In such a case, the taxation of the income will be governed by the treaty provisions pertaining to income from independent personal services (i.e. Article 14).

Article 22 Elimination of Double Taxation

[See treaty text](#)

Sweden

Credit method; but:

Exemption with progression (income taxable only in Mauritius under the treaty)

Full exemption dividends paid by a Mauritian-resident company to a Swedish-resident company, subject to certain conditions.

Tax sparing credit

Mauritius

Credit method; but:

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

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 designated taxes foregone in Mauritius up till the end of 2002, 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 23 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 24 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 25 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 26 Diplomats

[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 27 Entry into Force

[See treaty text](#)

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

Article 28 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.