



# **COMPARATIVE STUDY OF TAX TREATIES IN MAURITIUS**

*(Part I)*

## Comparative Study of

It is crucial for taxpayers to comprehend the intricate mechanism of tax treaties to make informed decisions about their tax affairs and deal with the controversies of the tax matters.

By means of a series of articles, we endeavour to showcase to our readers the different provisions enunciated in the tax treaties which Mauritius has signed and implemented with other jurisdictions, commonly known as Double Taxation Avoidance Agreements (DTAAs) and how they differ amongst countries.

At the outset, our article will focus on the provisions around the Preamble and its vital role in the interpretation of tax treaties.

First and foremost, the Preamble follows the Law of treaties of the UN Vienna Convention (1969). The Preamble lays the framework and recitals for concluding a tax treaty between two countries. In simple words, it sets out the aim, intention and motivation of the Contracting States in enacting tax treaties. Moreso, the Preamble is instrumental in identifying the object and purpose of the tax treaties to ease any ambiguous interpretation.

Before the adoption of the Multilateral Instrument (MLI) to implement tax treaty measures to prevent Base Erosion and Profit Shifting (BEPS), the Preamble was spelt out notably as *“Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasions”*. This gave some leeway to challenging interpretation of the existing articles of the tax treaties in different courts of justice when it came to allocating taxing rights.

Following the introduction of the OECD/G20 Base Erosion and Profit Shifting (BEPS) action plan to combat base erosion and profit shifting, several jurisdictions concluded negotiations to the Multilateral Convention and subsequently adopted the Multilateral Instrument (MLI) after becoming signatories to the latter.

With the rapid evolution of cross-border transactions, it is increasingly more important for jurisdictions to promote reasonableness and fairness in taxation and ascertain that their



## Tax Treaties in Mauritius

tax base is not eroded as this would jeopardise their economic and social landscape.

The MLI therefore urged the revisiting of the Preamble in view of the two minimum standards set forth by the BEPS action plan to combat harmful tax practices (Action 5) and prevent treaty abuse (Action 6). Jurisdictions, which are party to the MLI, have modified their Preamble to follow the Preamble of the OECD Model Convention on Income and Capital to read as:

*"Desiring to further develop their economic relationship and to enhance their cooperation in tax matters. Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)."*

The new Preamble is arguably poised to hamper tax evasion or avoidance by leveraging on the substantive provisions revolving around the Principle Purpose Test (PPT) which seeks to deny treaty benefits to abusive arrangements.

### OUR VIEWS

With the proposed amendments to the Mauritius India Double Taxation Avoidance Agreement by a recent protocol signed between the Government of Mauritius and the Government of India, a lot of discussions are presently going on in the public on the precise role of the Preamble for the interpretation of a tax treaty.

There is a consensus that the purpose of a tax treaty should primarily be derived from the wordings of the substantive provisions of the tax treaty in question. The fact that a Preamble makes no reference to a particular subject matter, for example, the prevention of tax avoidance and evasion does not mean that such may not be part of the treaty's objectives. The language of the Preamble has no standard meaning and it is generally accepted that the recitals of the Preamble are not the appropriate place to state the rights and obligations of the parties which must, instead, be included in the substantive provisions of the treaty.



## Comparative Study of Tax Treaties in Mauritius

A review of case law concerning treaty shopping or round tripping shows that Courts around the world take a different approach to treaty interpretation in matters involving treaty shopping in general and to the value of the Preamble of the tax treaty. In that connection, we have taken the liberty to reproduce some extracts from an article written by Professor Luc De Broe and published in the Bulletin for International Taxation April/May 2020 which may still be relevant in today's context.

*"The Australian and Canadian courts either pay no attention to the preamble or - where they do - they do not assert legal value to it because they are of the opinion that it merely indicates a vague policy objective, which is hardly reflected in the substantive provisions of the treaty or unhelpful to determine the underlying objectives of the substantive provisions which are allegedly abused. Although the structure led to double non-taxation and had little or no economic substance, courts did not feel compelled to depart from a literal interpretation of those provisions and gave the terms of those provisions their plain and ordinary meaning."*

*"On the other hand, the French court did not pay attention to the preamble either, but decided that the overarching economic objective of the tax treaty is to foster cross-border trade and investment and that accordingly, transactions devoid of economic substance should not enjoy the benefits offered by the tax treaty."*

*"In the post-BEPS era, the interpretation of tax treaties to prevent their abuse is not the same as before. This position is not explained by the new title and preamble of tax treaties but by the fact that the OECD Model and bilateral tax treaties as amended by the MLI have now been loaded with anti-avoidance measures."*

## Comparative Study of Tax Treaties in Mauritius

*"The new preamble is of little or no help in interpreting the language of the PPT."*

*"The preamble is also not helpful in assisting to ascertain the objectives underlying the treaty provisions; which the taxpayer's arrangement allegedly abuses, i.e. the second prong of the PPT. As tax treaties have several objectives and the elimination of double taxation is their primary objective, an interpretation based on ground that treaty abuse is to be prevented, but which results in unresolved double taxation, cannot be supported by the terms of the preamble and the wording of article 31 of the Vienna Convention (1969). Only cases of double non-taxation that result from structured tax evasion or avoidance, including treaty shopping, are intended to be caught by the preamble. In the absence of an abusive arrangement, a denial of treaty benefits because there is a double non-taxation, would override the clear terms of the treaty and would be in breach of article 31 of the Vienna Convention (1969). As a result, transactions involving the use of entities that result in double non-taxation, but that otherwise have the necessary economic rationale and substance, i.e. actual involvement in operations by means of experienced board members, skilled personnel, adequate office space and equipment, assumption of risk, etc., and that respect the conditions concerning residence and beneficial ownership of income, cannot be regarded as abusive, as they do not frustrate the overarching economic objective of the tax treaty."*

The table below purports to outline a comparative study of the different DTAA's signed by Mauritius which are already effective. We should bear in mind that some countries have already adopted the MLI and as a consequence, their Preamble were reviewed. In some cases, the new treaties that were signed post the BEPS measures already embedded the new Preamble as best practice.

## Comparative Study of Tax Treaties in Mauritius



- Hong Kong
- India
- Malaysia
- Nepal
- Pakistan

- People's Republic of Bangladesh
- People's Republic of China
- Singapore
- Sri Lanka
- Thailand

- Barbados

- Australia

- Kuwait

- State of Qatar

- Oman

- United Arab Emirates

- Belgium
- Croatia
- Cyprus
- Estonia
- France
- Germany
- Guernsey

- Italy
- Jersey
- Luxembourg
- Malta
- Monaco
- Sweden
- United Kingdom

- Botswana

- Namibia

- Cabo Verde

- Republic of Congo

- Egypt

- Rwanda

- Eswatini

- Seychelles

- Ghana

- South Africa

- Lesotho

- Tunisia

- Madagascar

- Uganda

- Mozambique

- Zimbabwe

## AFRICA



### Egypt, Seychelles, South Africa and Tunisia

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters. Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

### Cabo Verde, Madagascar and Republic of Congo

#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

These countries are not yet party to the MLI convention, and the relevant tax treaties are thus not yet compliant with BEPS minimum standards

## Ghana, Rwanda and Zimbabwe

### GHANA

#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains

### RWANDA

#### Existing Preamble

Desiring to promote and strengthen the economic relations between the two countries and to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### ZIMBABWE

#### Existing Preamble

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, capital and capital gains

#### New Preamble

These countries are not yet party to the MLI convention, and the relevant tax treaties are thus not yet compliant with BEPS minimum standards



## Botswana

### Existing Preamble

Desiring to amend the Convention between the Republic of Mauritius and the Republic of Botswana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains

### New Preamble

Although the country is not party to the MLI convention, a new Bilateral Treaty awaiting signature will incorporate the new Preamble of the MLI

## Lesotho

### New Preamble

No MLI. However, the treaty was signed in 2021 and already embedded the New Preamble:  
Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.  
Intending to conclude an Agreement for the elimination of double taxation with respect to the taxes without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions)

## Mozambique and Uganda

### Existing Preamble

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income

### New Preamble

Although the countries are not party to the MLI convention, the new Protocols to the existing Tax Treaties awaiting signature will include the new Preamble of the MLI

## Eswatini and Namibia

### ESWATINI

#### Existing Preamble

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income

### NAMIBIA

#### Old Preamble

Desiring to promote and strengthen the economic relations between the two countries

#### New Preamble

Eswatini and Namibia have signed the MLI which have not yet been ratified

## AMERICA



## Barbados

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,  
Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## AUSTRALIA



### Australia

#### Existing Preamble

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments

#### New Preamble

No MLI for abridged treaty with Australia

## ASIA



### Pakistan, People's Republic of China and Singapore

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters. Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Malaysia and Thailand

### MALAYSIA

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### THAILAND

#### Old Preamble

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income

#### New Preamble

Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Hong Kong

### New Preamble

No MLI. However, the treaty was signed in 2022 and already embedded the New Preamble:

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.

Intending to eliminate double taxation with respect to the taxes without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Nepal and Sri Lanka

### NEPAL

#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### SRI LANKA

#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion

#### New Preamble

These countries are not yet party to the MLI convention, and the relevant tax treaties are thus not compliant with BEPS minimum standards

## India and People's Republic of Bangladesh

### INDIA

#### Existing Preamble

Desiring to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

The new Protocol to the existing Tax Treaty awaiting ratification will include the new Preamble of the MLI

### BANGLADESH

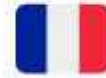
#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

Although the country is not party to the MLI convention, a new Bilateral Treaty awaiting signature will incorporate the new Preamble of the MLI

## EUROPE



### Croatia, France and United Kingdom

#### **CROATIA**

##### **Old Preamble**

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income

#### **FRANCE**

##### **Old Preamble**

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital

#### **UNITED KINGDOM**

##### **Old Preamble**

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains

##### **New Preamble**

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.

Intending to eliminate double taxation with respect to the taxes covered by [this Convention] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Convention] for the indirect benefit of residents of third jurisdictions)

## Belgium, Guernsey, Malta and Monaco

### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.  
Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Cyprus and Luxembourg

### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.  
Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Germany

### New Preamble

No MLI. However, the amended protocol was signed in 2021 and already embedded the New Preamble:

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions)

## Estonia

### New Preamble

No MLI. However, the treaty was signed in 2021 and already embedded the New Preamble:

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.

Intending to conclude an Agreement for the elimination of double taxation with respect to the taxes without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions)

## Jersey

### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### New Preamble

The new Protocol to the existing Tax Treaty awaiting signature will include the new Preamble of the MLI



## Italy and Sweden

### ITALY

#### Existing Preamble

Desiring to amend the Convention for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion

#### New Preamble

Italy has signed the MLI which has not yet been ratified

### SWEDEN

#### Existing Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

#### New Preamble

Both Mauritius and Sweden are signatories to the MLI convention for the adoption of the BEPS minimum standards. However, the MRA has not yet published any document / synthesised text to specify which provisions of the DTAA have been modified

## MIDDLE EAST



## Oman

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

#### New Preamble

Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## State of Qatar and United Arab Emirates

### STATE OF QATAR

#### Old Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

### UNITED ARAB EMIRATES

#### Old Preamble

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income

#### New Preamble

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.  
Intending to eliminate double taxation with respect to the taxes covered by [this Agreement] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [the Agreement] for the indirect benefit of residents of third jurisdictions)

## Kuwait

#### Existing Preamble

Desiring to promote mutual economic relations by removing fiscal obstacles through the conclusion of an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital

#### New Preamble




Kuwait has signed the MLI which has not yet been ratified

It is interesting to emphasize that the new Preamble is certainly geared towards safeguarding the rights of the jurisdictions and reaching a desirable economic position for the benefit of both treaty partners.

Please stay tune for our looming series of articles and feel free to connect with our tax team on [taxadvisory@dtos-mu.com](mailto:taxadvisory@dtos-mu.com) for any assistance or clarity.

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