



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 202

India- Mauritius Tax Treaty

**DTAA India &
Mauritius**

**Bilateral Tax
Treaty**



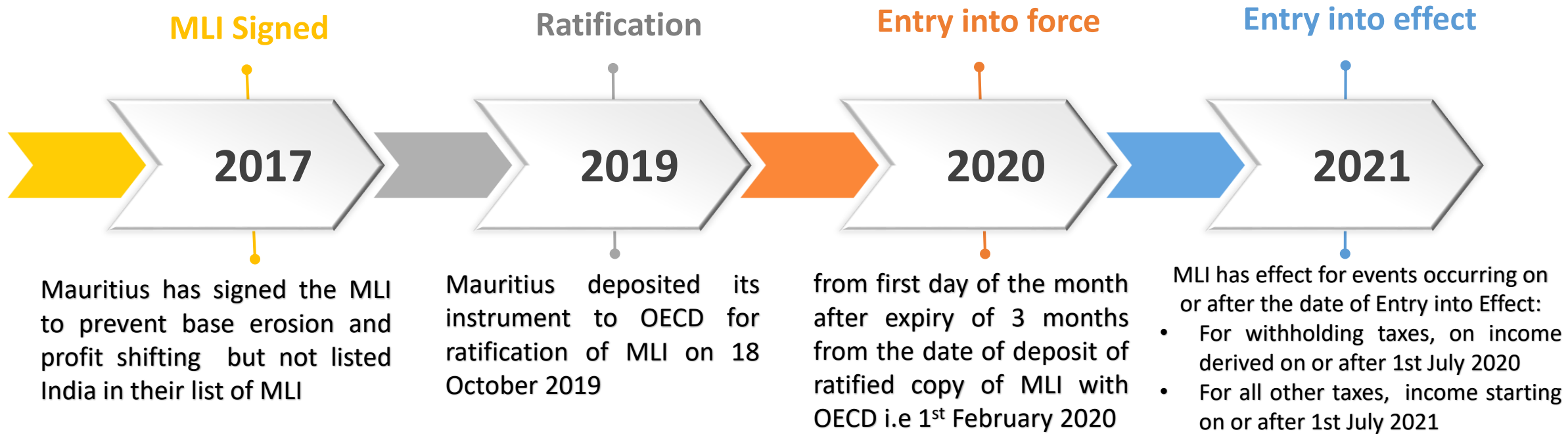
**DOUBLE
TAXATION**

Protocol amending the convention between the tax treaty of India and Mauritius for avoidance of double-taxation and prevention of tax evasion

20.04.2024



MLI Position of India-Mauritius tax treaty



The MLI only modifies tax treaties that are under covered Tax agreement (CTA). Mauritius had signed the MLI but did not list India in their list of MLI

CTA is a tax agreement that is in force between parties to the MLI and which both parties have listed under MLI.

Existing tax treaty shall be considered as CTA once the following conditions are satisfied by both the countries :

- Signed ,ratified the MLI under their domestic procedures and deposited the ratified copy of MLI with OECD
- Listed each other in its list of treaties and have submitted the list to OECD

Since both the parties have not listed each other so this is not a CTA

Background related to amending the tax treaties with Mauritius

A protocol has been signed by both the government of India and Mauritius on 07.03.2024 relating to amend its tax treaty to prevent tax evasion by incorporating principal purpose test (PPT) which is the minimum standard of BEPS action plan with respect to capital gain income and other income.

Now let's discuss capital gain taxability in respect of investment made in India by Mauritius resident prior to 01.04.2017

Sale of investment of Indian company by a tax resident of Mauritius of securities purchase in India on or before 31.03.2017 are not taxable in India irrespective of the date when such shares are sold. For claiming exemption of capital gain in India, Mauritius tax resident should have Tax Residency certificate (TRC) issued by Mauritius tax authority which is considered as sufficient evidence for claiming the treaty benefits.

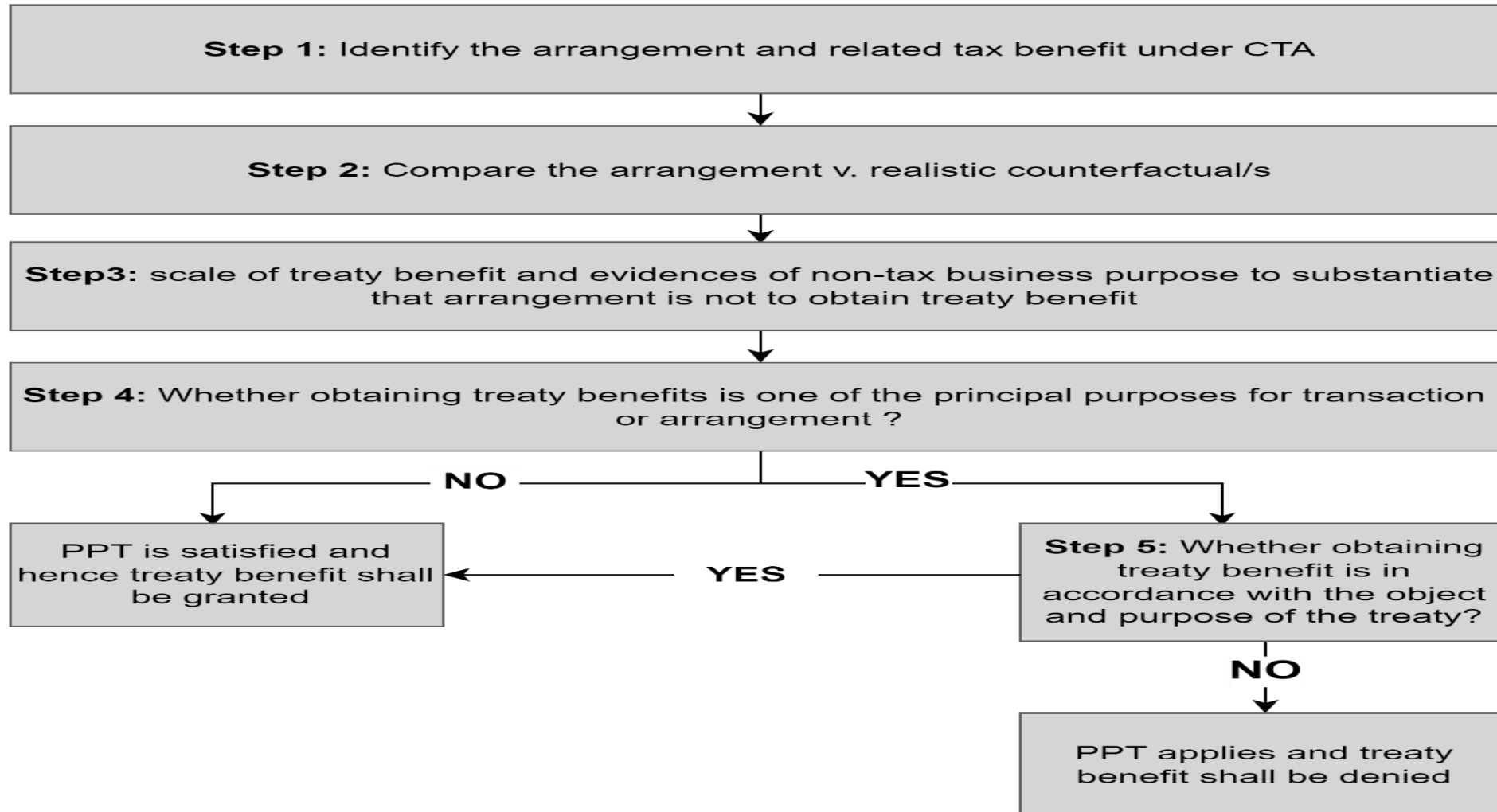
After the amendment in 2017, capital gain arising in respect of shares acquired on or after 01.04.2017 can be taxed as per the provisions of Indian Tax Law.

Now let's discuss the implication of protocol of signed between India and Mauritius tax treaty on 07.03.2024

Principal purpose Test

The objective of this test is to check that if the principle purpose of entering into a transaction was only to take benefit of treaty then such benefit shall not be granted and PPT offered as Minimum standard in MLI

STEPS for evaluation of PPT : Onus of Proof and possible approach



Protocol amending tax treaty of India- Mauritius

1

Protocol amends the preamble of the convention of tax treaty as per Article 1

2

Protocol introduces the principal purpose test to the India-Mauritius tax treaty by adding new article 27B

3

Date of entry into force of protocol as per Article 3

- ❖ The inclusion of a new preamble which states that the purpose of the DTAA is to **eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion** or avoidance through treating shopping.
- ❖ The inclusion of a 'principal purpose test' provision which is an anti-abuse rule and benefit under the India-Mauritius Treaty shall not be granted in respect of any item of income, if it is reasonable to conclude that principal purpose of any arrangement directly or indirectly was to claim tax benefit, unless it is specified by tax-payer that the tax benefit is in accordance with the object and purpose of the Treaty i.e. Principal Purpose Test (PPT).
- ❖ Further, other benefits under the Treaty, such as concessional rate of tax in respect of dividend and interest income, etc., can also be denied and TRC issued by the Mauritius authority will not be sufficient evidence to claim the benefit under the India-Mauritius Treaty.
- ❖ As per the CBDT public announcement it has been stated that this Protocol is yet to be ratified and notified u/s 90 of the Income-tax Act, 1961. Further, there is a possibility that CBDT may clarify that this amendment is applicable prospectively, i.e., in respect of transactions entered on or after the date of notification of amendment in the treaty

Our Comments

- ❖ Although the para 2 of Article 3 states that the provision shall have effect from the date of entry into force of protocol i.e. this protocol should affect the transaction entered after the date of notification by the respective countries.
- ❖ However, currently there is no clarity as to whether there will be any grandfathering benefit available as was earlier present in Article 13 of India- Mauritius DTAA.
- ❖ Hence entities who were not actual tax resident of Mauritius but were using Mauritius as a route to make investment in India are under panic as to whether this new protocol will also affect their investment made in India before 01.04.2017 and they might loose on India- Mauritius treaty benefit. Further, after this protocol only having a valid TRC will not make a person eligible to claim the treaty benefit. Thus, the principle purpose test also negates the benefit of DTAA which was till now available to non-residents by holding a valid TRC.
- ❖ Reference for claiming DTAA benefit based on valid TRC:
 - CBDT Circular No. 789 dated 13.04.2000
 - Union of India v. Azadi Bachao Andolan [2003] 132 Taxman 373 (SC)

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