THE MALAYSIA-MAURITIUS DOUBLE TAXATION AGREEMENT: A PRACTITIONER'S GUIDE FOR CROSS-BORDER INVESTMENT AND ISLAMIC FINANCE STRUCTURING

Assadullah Durbarry*

ABSTRACT

This article provides a comprehensive analysis of the Double Taxation Agreement (DTA) between Malaysia and Mauritius, signed on 23 August 1992 and subsequently modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The article examines the treaty's key provisions including residence rules, permanent establishment thresholds, and withholding tax rates on dividends, interest, and royalties. Particular attention is given to the MLI modifications introducing the Principal Purpose Test and enhanced Mutual Agreement Procedures. The article explores practical investment structures for Malaysian companies expanding into Africa via Mauritius, and for Mauritian investors accessing Malaysia's Islamic finance infrastructure. Islamic finance considerations are addressed, including Labuan tax incentives and the treatment of sukuk and Shariah-compliant fund structures under the DTA. Three practical case studies illustrate the application of treaty provisions to common cross-border scenarios. The article concludes with an analysis of recent developments including Pillar Two implications and recommendations for practitioners advising on Malaysia-Mauritius cross-border transactions.

Keywords: Double taxation agreement; Malaysia-Mauritius DTA; cross-border investment; Islamic finance; withholding tax

ABSTRAK

Artikel ini menyediakan analisis komprehensif mengenai Perjanjian Pengelakan Cukai Berganda (DTA) antara Malaysia dan Mauritius, yang ditandatangani pada 23 Ogos 1992 dan kemudiannya diubah suai oleh Konvensyen Multilateral untuk Melaksanakan Langkah-Langkah

* A dual-qualified legal practitioner admitted in Mauritius and Australia, an academic, philanthropist and founder of Durbarry Chambers and the Ilma Foundation. Email: a@durbarry.com

Berkaitan Perjanjian Cukai bagi Mencegah Pengikisan Asas Cukai dan Peralihan Keuntungan (Instrumen Pelbagai Hala, "MLI"). Artikel ini mengkaji peruntukan utama perjanjian termasuk peraturan residensi, ambang pertubuhan tetap, dan kadar cukai pegangan ke atas dividen, faedah, dan royalti. Perhatian khusus diberikan kepada pengubahsuaian MLI yang memperkenalkan Ujian Tujuan Utama dan prosedur Persetujuan Bersama yang dipertingkatkan. Artikel ini meneroka struktur pelaburan praktikal untuk syarikat Malaysia yang berkembang ke Afrika melalui Mauritius, dan untuk pelabur Mauritius yang mengakses infrastruktur kewangan Islam Malaysia. Pertimbangan kewangan Islam dibincangkan, termasuk insentif cukai Labuan dan layanan sukuk serta struktur dana patuh Syariah di bawah DTA. Tiga kajian kes praktikal menggambarkan aplikasi peruntukan perjanjian kepada senario rentas sempadan yang lazim. Artikel ini diakhiri dengan analisis perkembangan terkini termasuk implikasi Pilar Dua dan cadangan untuk pengamal yang menasihati transaksi rentas sempadan Malaysia-Mauritius.

Kata kunci: Perjanjian pengelakan cukai berganda; DTA Malaysia-Mauritius; pelaburan rentas sempadan; kewangan Islam; cukai pegangan

INTRODUCTION

The economic relationship between Malaysia and Mauritius represents a strategically underexplored corridor for cross-border investment and tax planning. While both jurisdictions have established themselves as significant players in their respective regions (Malaysia as Southeast Asia's Islamic finance powerhouse and Mauritius as Africa's premier international financial centre), the bilateral framework connecting them remains underutilised by practitioners in both countries.

The Double Taxation Agreement (DTA) between Malaysia and Mauritius, signed on 23 August 1992 and subsequently modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), provides a comprehensive framework for the allocation of taxing rights between the two jurisdictions.[1] For Malaysian practitioners, this treaty opens pathways to Africa's burgeoning markets through Mauritius's extensive treaty network covering 17 African countries. For Mauritian practitioners and their clients, the DTA facilitates access to Malaysia's sophisticated Islamic finance infrastructure and Southeast Asian markets.

This article provides a practical analysis of the Malaysia-Mauritius DTA, examining its key provisions, withholding tax implications, MLI modifications, and strategic applications for cross-border investment structures. Particular attention is given to Islamic finance considerations, recognising the growing convergence between Malaysia's established Islamic finance ecosystem and Mauritius's emerging capabilities in Shariah-compliant private equity structures.

OVERVIEW OF THE AGREEMENT

Historical Context and Legal Basis

The Malaysia-Mauritius DTA was signed on 23 August 1992 in Kuala Lumpur, entering into force following the exchange of instruments of

---

[1] Mauritius Revenue Authority, August 23, 1992, "Malaysia/Mauritius Double Taxation Agreement," Mauritius Revenue Authority, accessed December 11, 2025, https://www.mra.mu/download/MalaysiaSynthesised.pdf.

ratification. The agreement entered into force and took effect in accordance with Article 26.

In Malaysia, the DTA derives its domestic legal authority from Section 132 of the Income Tax Act 1967, which empowers the Minister of Finance to make arrangements with foreign governments for the avoidance of double taxation.[2] Critically, Section 132(1)(b) establishes that in the event of any conflict between the provisions of the DTA and the Income Tax Act, the DTA shall prevail.

This principle of treaty supremacy has been consistently affirmed by Malaysian courts. In the landmark Federal Court decision of *Director General of Inland Revenue v Euromedical Industries Ltd*,[3] the court held that where there is conflict between domestic tax law and a DTA, the treaty provisions must prevail. This principle was subsequently reaffirmed in *Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[4] and *Ketua Pengarah Hasil Dalam Negeri v Thomson Reuters Global Resources*,[5] where the High Court allowed a Swiss company's tax refund claim based on the DTA definition of 'royalty' prevailing over the domestic definition.

Taxes Covered

The DTA applies to taxes on income imposed by either Contracting State. In Malaysia, this encompasses the income tax, the supplementary income tax (development tax), and the petroleum income tax. In Mauritius, the agreement covers the income tax. The treaty also applies to any identical or substantially similar taxes imposed after the date of signature in addition to, or in place of, the existing taxes.

MLI Modifications

Both Malaysia and Mauritius are signatories to the MLI. Malaysia signed on 24 January 2018 and deposited its instrument of ratification on 18 February 2021, with the MLI entering into force for Malaysia on 1 June 2021. Mauritius signed on 5 July 2017 and deposited its

2 Income Tax Act 1967 (Malaysia), s 132.
3 [1983] CLJ (Rep) 128 (Federal Court).
4 [2011] MSTC 30-033 (High Court).
5 [2016] 10 MLJ 1 (High Court).

instrument of ratification on 18 October 2019, with the MLI entering into force for Mauritius on 1 February 2020.[6]

The MLI modifications took effect with respect to the Malaysia-Mauritius DTA as follows: for taxes withheld at source on amounts paid or credited to non-residents, from 1 January 2022 (Malaysia) and 1 July 2021 (Mauritius); for all other taxes, for taxable periods beginning on or after 1 December 2021 in both jurisdictions.

KEY PROVISIONS FOR PRACTITIONERS

Residence (Article 4)

The concept of residence is fundamental to the operation of any DTA. Under Article 4, a 'resident of a Contracting State' means a person who is resident in that State for the purposes of its domestic tax law. However, the term excludes any person who is liable to tax in that State only in respect of income from sources in that State.[7]

For individuals who are dual residents, the tie-breaker rules apply in the following order: permanent home, centre of vital interests, habitual abode, nationality, and finally mutual agreement between competent authorities. For persons other than individuals (including companies), dual residence is resolved by reference to the place of effective management.[8]

Malaysian practitioners should note that Malaysia's domestic residence rules for companies focus on the place where management and control are exercised. A company is resident in Malaysia if its management and control are exercised in Malaysia at any time during the basis period. This broadly aligns with the DTA's effective management test for resolving dual residence.

Permanent Establishment (Article 5)

Article 5 defines 'permanent establishment' (PE) as a fixed place of business through which the business of an enterprise is wholly or partly

6 Mauritius Revenue Authority, "Malaysia /Mauritius Double Taxation Agreement."

7 Malaysia-Mauritius DTA, art 4(1).

8 Malaysia-Mauritius DTA, art 4(2).

continued. The article provides an inclusive list of examples: place of management, branch, office, factory, workshop, mine, oil, or gas well, quarry, farm, or plantation.[9]

Notably, the Malaysia-Mauritius DTA includes a relatively short construction PE threshold of six months for building sites, construction or installation projects, and supervisory activities. This is shorter than the 12-month threshold in the OECD Model Convention, reflecting both countries' UN Model Convention influences.[10]

The agency PE provisions deem a person acting on behalf of an enterprise to constitute a PE if that person has and habitually exercises authority to conclude contracts, habitually maintains stock for delivery, or manufactures or processes goods for the enterprise. Independent agents acting in the ordinary course of their business are excluded unless they act exclusively or almost exclusively for the enterprise.

Business Profits (Article 7)

Under Article 7, the profits of an enterprise are taxable only in its State of residence unless the enterprise carries on business in the other State through a PE situated therein. Where a PE exists, profits may be taxed in the source State, but only to the extent attributable to that PE.[11]

The article adopts the arm's length principle for attributing profits to a PE, requiring that the PE be treated as if it were a distinct and separate enterprise dealing wholly independently with the enterprise of which it is a part. Deductions are allowed for expenses incurred for the purposes of the PE, including executive and general administrative expenses, whether incurred in the PE State or elsewhere.

WITHHOLDING TAX RATES

The DTA provides for reduced withholding tax rates on passive income, representing one of its most significant practical benefits for cross-border transactions.

---

9 Malaysia-Mauritius DTA, art 5(1).

10 Malaysia-Mauritius DTA, art 5(2)(h). Compare OECD Model Tax Convention (2017), art 5(3) (12-month threshold).

11 Malaysia-Mauritius DTA, art 7(1).

Dividends (Article 10)

Dividends paid by a company resident in one Contracting State to a resident of the other State may be taxed in that other State. However, such dividends may also be taxed in the source State, subject to the following limits: 5% of the gross amount if the beneficial owner is a company (other than a partnership) controlling directly or indirectly at least 10% of the voting power in the paying company; and 15% of the gross amount in all other cases.[12]

Additionally, Article 10(3) provides that dividends paid by a Malaysian resident company to a Mauritius resident beneficial owner shall be exempt from any Malaysian tax chargeable on dividends in addition to the tax chargeable on the company's income. This provision was particularly relevant under Malaysia's former imputation system.[13]

Interest (Article 11)

Interest arising in one State and paid to a resident of the other State may be taxed in the recipient's State of residence. However, such interest may also be taxed in the source State at a rate not exceeding 15% of the gross amount if the recipient is the beneficial owner.[14]

Importantly, Article 11(3) provides that interest beneficially received by a Mauritius resident shall be exempt from Malaysian tax if the loan or indebtedness constitutes an 'approved loan' as defined in Section 2(1) of the Malaysian Income Tax Act 1967.[15] Furthermore, Article 11(4) exempts government-to-government interest payments from source State taxation, with 'Government' defined to include the central banks (Bank Negara Malaysia and Bank of Mauritius), statutory bodies, and wholly government-owned institutions.

Royalties (Article 12)

Royalties arising in one State and paid to a beneficial owner resident in the other State may be taxed in both States, but the source State tax shall not exceed 15% of the gross amount.[16]

---

12 Malaysia-Mauritius DTA, art 10(2).
13 Malaysia-Mauritius DTA, art 10(3).
14 Malaysia-Mauritius DTA, art 11(2).
15 Malaysia-Mauritius DTA, art 11(3).
16 Malaysia-Mauritius DTA, art 12(2).

The definition of 'royalties' in Article 12(3) covers payments for the use of patents, trademarks, designs, secret formulae, copyrights, scientific works, industrial/commercial/scientific equipment, and know-how. It also covers cinematograph films and tapes for radio or television broadcasting.

Comparative analysis

The following table compares the Malaysia-Mauritius DTA withholding tax rates with Malaysia's other key treaty partners:

Treaty Partner	Dividends (Qual.)	Dividends (Other)	Interest	Royalties
Mauritius	5%	15%	15%	15%
Singapore	5%	10%	10%	8%
United Kingdom	0%	10%	10%	8%
UAE	0%	10%	10%	10%
Domestic Rate	0%	0%	15%	10%

Note: Malaysia abolished dividend withholding tax from 1 January 2014 under the single-tier system. The treaty rates remain relevant for interest, royalties, and other payments.

MLI MODIFICATIONS AND ANTI-AVOIDANCE

Preamble Modification (Article 6 MLI)

The MLI has replaced the original preamble language of the DTA with new text expressly stating that the agreement is intended to eliminate double taxation '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).'[17]

While the preamble is not directly operative, it provides important interpretive context. Tax authorities and courts in both jurisdictions may refer to this language when considering whether a particular arrangement constitutes treaty abuse.

Principal Purpose Test (Article 7 MLI)

Perhaps the most significant MLI modification is the addition of the Principal Purpose Test (PPT). Under this provision, a benefit under the DTA shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit.[18]

The PPT is a subjective test that requires an assessment of the taxpayer's purpose. However, the benefit may still be granted if it is established that granting the benefit in the circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

For practitioners structuring cross-border transactions, the PPT necessitates careful documentation of commercial substance and non-tax business purposes. Arrangements that appear designed primarily to access treaty benefits may be challenged, even if they satisfy all technical requirements.

Corresponding Adjustments (Article 17 MLI)

The MLI has introduced Article 17, which requires a Contracting State to make an appropriate adjustment to tax charged on profits that have already been taxed in the other State due to a transfer pricing adjustment. This provision ensures that double taxation arising from transfer pricing adjustments can be relieved through corresponding

---

17 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), art 6(1).

18 MLI, art 7(1).

adjustments, with the competent authorities consulting each other if necessary.[19]

Mutual Agreement Procedure (Article 16 MLI)

The MLI has enhanced the Mutual Agreement Procedure (MAP) provisions. Notably, a taxpayer may now present a case to the competent authority of either Contracting State (not just the State of residence), and any agreement reached shall be implemented notwithstanding any time limits in domestic law.[20]

INVESTMENT STRUCTURES AND PLANNING OPPORTUNITIES

Malaysian Outbound Investment Via Mauritius

Mauritius has established itself as Africa's leading international financial centre, hosting more than 450 private equity funds channelling nearly US$40 billion in investments across the continent.[21] For Malaysian investors seeking exposure to African markets, Mauritius offers several compelling advantages.

First, Mauritius has concluded double taxation agreements with a substantial number of African states, including South Africa and various SADC and COMESA member states, with further treaties (including with Nigeria and Kenya) awaiting ratification.[22] This treaty network can significantly reduce withholding taxes on dividends, interest, and royalties flowing from African investments.

Second, Mauritius's Global Business Company (GBC) regime provides a competitive 15% flat corporate tax rate with a partial

---

19 MLI, art 17(1).

20 MLI, art 16(1)–(2).

21 Economic Development Board Mauritius, n.d, "Mauritius : The Ideal Business and Investment Hub for Africa," Economic Development Board Mauritius, accessed July 21, 2026, https://edbmauritius.org/africa-strategy.

22 Bolder Group, March 6, 2023, "Mauritius and Its Tax Treaties with Strong 17 African Countries," Bolder, accessed December 11, 2025, https://boldergroup.com/resources/blogs/mauritius-and-its-tax-treaties-withstrong-strong17-african-countries/.

exemption system that can reduce the effective rate to 3% for qualifying income. The regime has been reformed to comply with OECD and EU standards, with substance requirements now mandating that GBCs employ adequate qualified personnel and incur adequate expenditure in Mauritius.

Third, Mauritius's legal system, grounded in both English common law and French civil law traditions, provides familiarity for investors across Anglophone and Francophone Africa. The Mauritius International Arbitration Centre and the Commercial Division of the Supreme Court provide sophisticated dispute resolution mechanisms.

A typical structure might involve a Malaysian company establishing a Mauritius GBC to hold investments in African subsidiaries or joint ventures. Dividends flowing from Africa to Mauritius may benefit from reduced withholding under Mauritius's African treaties, while dividends from Mauritius to Malaysia would attract no Mauritian withholding tax, as Mauritius levies none on dividends under its domestic law; the 5%/15% caps in Article 10(2) are therefore of limited practical relevance in this direction.

Mauritian inbound investment to Malaysia

For Mauritian investors and the international clients they serve, Malaysia offers access to Southeast Asia's most developed Islamic finance ecosystem and substantial investment incentives in strategic sectors.

Malaysia's Principal Hub incentive provides a 0% or 5% tax rate for up to 10 years for companies using Malaysia as a base to conduct regional and global business. The Labuan International Business and Financial Centre offers an alternative regime with a 3% tax on net profits for trading activities.

Mauritian investment holding companies may be used to channel portfolio investments into Malaysian equities, with dividend income exempt from Malaysian withholding tax under the single-tier system. For debt investments, the 15% withholding tax on interest may be reduced through proper structuring and the 'approved loan' exemption under Article 11(3).

Practical Structuring Considerations

When structuring cross-border investments utilising the Malaysia-Mauritius DTA, practitioners should consider the following:

1. Substance requirements: Both Malaysia (for Labuan entities) and Mauritius (for GBCs) have implemented enhanced substance requirements. Entities must demonstrate adequate physical presence, qualified employees, and local decision-making to access treaty benefits.

2. Beneficial ownership: Treaty benefits for dividends, interest, and royalties are available only to 'beneficial owners.' Conduit arrangements where the recipient is obligated to pass on payments to third parties may be denied treaty benefits.

3. PPT considerations: Document commercial rationale beyond tax benefits. The existence of genuine business activities, real economic substance, and non-tax motivations will be critical if arrangements are challenged.

4. Certificate of residence: Ensure timely application for certificates of tax residence to claim treaty benefits. A Mauritius resident claiming relief in Malaysia should obtain a certificate of residence from the Mauritius Revenue Authority and furnish it to the Malaysian payer; a Malaysian resident claiming relief in Mauritius should obtain a certificate of residence from the Inland Revenue Board of Malaysia.

ISLAMIC FINANCE CONSIDERATIONS

The intersection of Islamic finance and cross-border investment represents a significant opportunity for the Malaysia-Mauritius corridor. Malaysia, with Islamic banking assets exceeding US$260 billion (approximately RM1.08 trillion) and comprehensive legislation including the Islamic Financial Services Act 2013, has been ranked first on the Islamic Finance Development Indicator. Mauritius, while still developing its Islamic finance capabilities, has established a regulatory framework through the Bank of Mauritius's Guideline for

Institutions Conducting Islamic Banking Business (2008) and joined the Islamic Financial Services Board in December 2018.[23]

Labuan Islamic Finance Incentives

Malaysia's Budget 2024 introduced significant incentives for Islamic finance activities conducted through the Labuan International Business and Financial Centre. Labuan entities undertaking Islamic finance activities enjoy full income tax exemption from 2024 to 2028, extended in Budget 2025 to include Labuan takaful business activities.[24]

This exemption applies to Islamic financial transactions conducted through Labuan entities, including sukuk arrangements, Islamic fund management, and Shariah-compliant financing structures. For Mauritian Islamic investors channelling capital into Southeast Asia, a Labuan Islamic entity may provide a tax-efficient vehicle for regional deployment.

DTA Treatment Of Islamic Finance Instruments

The Malaysia-Mauritius DTA, like most treaties negotiated before the widespread adoption of Islamic finance instruments, does not contain specific provisions for sukuk or other Shariah-compliant structures. However, the existing provisions can generally accommodate Islamic transactions through appropriate characterisation.

Profit distributions from sukuk may be characterised as interest (if the sukuk is debt-like, such as sukuk *murabahah* or sukuk *ijarah*) or dividends (if the sukuk is equity-like, such as sukuk *musharakah*). The characterisation will determine the applicable withholding tax rate under Articles 10 or 11.

---

[23] Mauritius Financial Services Commission, December 7, 2018 , "Press Release: Admission of FSC Mauritius to the Council of the Islamic Financial Services Board," Financial Services Commission, Mauritius, accessed December 11, 2026, https://www.fscmauritius.org/media/02pjr3kj/press-release-admission-of-fsc-mauritius-to-the-council-the-islamic-financial-services-board.pdf.

[24] Ministry of Finance Malaysia, October 13, 2023, "Budget 2024 Documents," Ministry of Finance Malaysia, accessed December 11, 2025, https://belanjawan.mof.gov.my/en/2024; KPMG PLT, October 18, 2024, "National Budget," KPMG PLT, accessed December 11, 2025, https://kpmg.com/my/en/insights/2024/10/national-budget.html.

For Islamic fund structures utilising *mudarabah* (profit-sharing) or *musharakah* (joint venture) contracts, profit allocations to investors would typically be characterised as business profits (if the investor has a PE) or dividends (if not). *Wakalah* (agency) fee arrangements would generally be treated as service fees.

Mauritius Islamic Private Equity Opportunity

As analysed in the author's recent article 'Unlocking New Pathways for Islamic Private Equity in Mauritius', Mauritius is uniquely positioned to become the premier hub for Islamic private equity investment into Africa.[25] The island's extensive treaty network, hybrid legal system, and competitive operational costs position it as the specialised gateway for channelling Gulf and Asian Islamic capital into African opportunities.

Three principal Shariah-compliant structures form the foundation for Islamic private equity: *musharakah* (joint venture where all parties contribute capital and share profits according to pre-agreed ratios), *mudarabah* (where one party provides capital while another manages the investment), and *wakalah* (where the fund manager acts as agent with fixed fees plus performance incentives).

For Malaysian Islamic investors, Mauritius offers a platform to access African markets through Shariah-compliant structures while benefiting from the DTA network. Conversely, Gulf Islamic capital may flow through Mauritius into Malaysian opportunities, particularly in halal industries, Islamic fintech, and sustainable infrastructure.

PRACTICAL COMPLIANCE REQUIREMENTS

Claiming Treaty Benefits in Malaysia

To claim reduced withholding tax rates under the DTA, the following procedure applies:

---

25 Assadullah Durbarry, "Unlocking new pathways for Islamic private equity in Mauritius," *Islamic Finance News* 22, no. 48 (2025): 23.

1. Obtain a Certificate of Residence from the Mauritius Revenue Authority confirming the recipient's tax residence status in Mauritius.
2. Submit the prescribed DTA forms to the Malaysian payer or the Inland Revenue Board of Malaysia (IRBM) before the payment is made, or within the stipulated time frame.
3. The Malaysian payer applies the reduced treaty rate when making the payment and remitting withholding tax.
4. Maintain supporting documentation including the commercial agreement, invoices, proof of payment, and evidence of the recipient's beneficial ownership status.

Where treaty benefits are not claimed at source, or where the domestic rate has been applied in error, a refund may be sought from the IRBM within the applicable limitation period.

Mutual Agreement Procedure

Where taxation not in accordance with the DTA has occurred, the affected person may request the competent authorities to resolve the matter through the Mutual Agreement Procedure. Following the MLI modifications, a case may be presented to the competent authority of either Contracting State within three years from the first notification of the action resulting in taxation not in accordance with the Agreement.[26]

In Malaysia, MAP requests are submitted to the Competent Authority Section of the IRBM. The IRBM has published MAP Guidelines providing detailed procedures and documentation requirements. Practitioners should note that while the competent authorities will endeavour to resolve the case, MAP does not guarantee a binding resolution.

---

[26] Lembaga Hasil Dalam Negeri Malaysia, December 27, 2023, "Inland Revenue Board of Malaysia mutual agreement procedure (MAP) guidelines," Lembaga Hasil Dalam Negeri Malaysia, accessed December 11, 2025, https://www.hasil.gov.my/wp-content/uploads/mutual-agreement-procedure-guidelines-2023.pdf.

Documentation and Record-Keeping

Given the enhanced anti-avoidance provisions introduced by the MLI, practitioners should ensure comprehensive documentation of all transactions claiming treaty benefits. This should include evidence of commercial substance (board minutes, management decisions, employee records), beneficial ownership declarations, transfer pricing documentation where relevant, and records demonstrating the non-tax business purposes of the arrangement.

ELIMINATION OF DOUBLE TAXATION

The methods for eliminating double taxation differ between the two Contracting States, reflecting their respective domestic tax systems at the time the treaty was negotiated.

Relief in Malaysia

Malaysia provides relief through the credit method. Subject to Malaysian domestic law regarding the allowance of foreign tax credits, Mauritius tax paid under Mauritian law by a Malaysian resident on income derived from Mauritius shall be allowed as a credit against Malaysian tax payable on that income.[27]

Where the income is a dividend paid by a Mauritius resident company to a Malaysian resident company owning not less than 10% of the voting shares, the credit extends to underlying Mauritius tax paid by the distributing company on the profits out of which the dividend is paid. This indirect credit mechanism prevents economic double taxation of corporate profits distributed as dividends.

Importantly, Article 22(2) introduces a 'tax sparing' provision. The term 'Mauritius tax payable' is deemed to include any amount that would have been payable as Mauritius tax but for an exemption or reduction granted under Mauritian law for incentives provided to promote economic development, provided the incentive is agreed by the competent authorities as having that main object. This ensures that Malaysian investors can still claim credit for Mauritius tax that was

27 Malaysia-Mauritius DTA, art 22(1).

forgone due to Mauritian investment incentives, preserving the benefit of those incentives.[28]

However, Article 22(3) limits this tax sparing credit to income arising within 10 years of the exemption or reduction first being granted to the enterprise.

Relief in Mauritius

Mauritius similarly provides relief through the credit method. Where a Mauritius resident derives income from Malaysian sources that is taxable in Malaysia under Malaysian law and the DTA, Mauritius allows a credit against its tax computed by reference to the same income.

For dividends, the credit considers Malaysian tax on the dividend itself plus, where the Mauritius recipient controls directly or indirectly at least 10% of the voting power of the Malaysian company, the underlying Malaysian tax paid on the profits out of which the dividend is paid.

Article 22(5) provides reciprocal tax sparing for Malaysian tax incentives, deeming 'Malaysian tax payable' to include tax that would have been payable but for exemptions or reductions under Malaysian laws for the promotion of economic development.

OTHER NOTABLE PROVISIONS

Capital Gains (Article 13)

Income from the alienation of immovable property may be taxed in the State where the property is situated. Income from the alienation of movable property forming part of the business property of a PE may be taxed in the State where the PE is located.

However, income from the alienation of ships or aircraft operated in international traffic, and movable property pertaining to such operations, is taxable only in the State of residence of the

[28] Malaysia-Mauritius DTA, art 22(2)–(3).

enterprise. Gains from the alienation of any other property are taxable only in the State of residence of the alienator.

Notably, the Malaysia-Mauritius DTA does not contain a provision allowing source State taxation of gains from the alienation of shares deriving their value principally from immovable property. This contrasts with several recent treaties entered by Malaysia and could be relevant for real property holding structures.

Personal Services and Employment (Articles 14-16)

Article 14 provides that remuneration derived by an individual resident in one State in respect of employment or profession shall be taxable only in that State unless the employment or profession is exercised in the other State. The standard 183-day rule applies for short-term assignments, exempting remuneration from source State taxation if the individual is present for less than 183 days, the remuneration is paid by a non-resident employer, and the remuneration is not borne by a PE in the source State.

Directors' fees (Article 15) may be taxed in the State where the company is resident. This ensures that directors cannot avoid source State taxation simply by performing their duties remotely.

Income derived by entertainers and athletes (Article 16) may be taxed in the State where the activities are exercised, overriding the general personal services rules. However, this does not apply where the visit is supported wholly or substantially from public funds of the other State.

Pensions and Government Service (Articles 17-18)

Private pensions and annuities arising in one State and paid to a resident of the other State are taxable only in the recipient's State of residence.

Government service remuneration (other than pensions) is taxable only in the paying State, unless the services are rendered in the other State and the recipient is a resident and national of that other State, or did not become resident solely for the purpose of performing the services. Government pensions are taxable only in the paying State.

Students, Teachers, and Researchers (Articles 19-20)

Students and trainees temporarily present in one State who were residents of the other State immediately before their visit are exempt from tax on remittances from abroad for maintenance, education, study, research, or training; amounts received as grants or awards for such purposes; and remuneration not exceeding US$3,000 per annum for services connected with their study or training.

Teachers and researchers who visit one State at the invitation of an educational institution for a period not exceeding two years are exempt from tax on remuneration for teaching or research, provided such remuneration is subject to tax in their State of residence.

Other Income (Article 21)

Items of income not expressly dealt with in other articles are taxable only in the recipient's State of residence, except that income derived from sources in the other State may also be taxed in that source State. This 'catch-all' provision ensures that no category of income escapes the treaty's allocation rules.

RECENT DEVELOPMENTS AND FUTURE OUTLOOK

Mauritius Developments

Mauritius continues to enhance its position as an international financial centre. The government's 2025-30 strategic roadmap for financial services targets increasing gross value added from the sector from US$1.7 billion to US$2.5 billion, with new specialised licensing frameworks for wealth management, family offices, and innovative financial products.

In July 2024, Mauritius signed a Comprehensive Economic Partnership Agreement (CEPA) with the United Arab Emirates[29], the first such agreement between the UAE and an African country. This agreement aims to increase trade, investment, and private sector

[29] Ministry of Foreign Affairs, Regional Integration and International Trade (Mauritius), April 2025, "Mauritius-UAE Comprehensive Economic Partnership Agreement," Mauritius Trade Easy, accessed October 6, 2026, https://www.mauritiustrade.mu/en/trade-agreements/uae

cooperation, potentially enhancing Mauritius's role as a conduit for Gulf capital into African and Asian markets.

The Mauritius Freeport was ranked first in Africa and seventh worldwide at the 2023 FDI Global Free Zones of the Year Awards. As of 2024, there were eleven third-party freeport developers, three private freeport developers, and more than 215 freeport operators, representing over 5,000 jobs. This logistics infrastructure complements the financial services sector and supports real economic activity.[30]

The OECD Investment Policy Review of Mauritius (September 2024) assessed the investment climate and discussed reform priorities, following Mauritius's adherence to the OECD Declaration on International Investment and Multinational Enterprises. This adherence signals Mauritius's commitment to international investment standards and responsible business conduct.[31]

Mauritius's treaty network continues to expand. Seven treaties await ratification (including with Nigeria, Kenya, and Morocco), six treaties await signature, and 20 treaties are being negotiated. The expansion of the African treaty network further enhances Mauritius's value proposition as a gateway jurisdiction.

Malaysian Developments

Malaysia's Budget 2025 introduced several measures relevant to cross-border structuring. The income tax exemption for Labuan entities undertaking Islamic finance activities was extended to include Labuan takaful business activities. Substance requirements for Labuan entities have been tightened, with the Minister of Finance now empowered to prescribe 'fit and proper person' requirements for full-time employees.

The Labuan International Business and Financial Centre has introduced the Islamic Digital Asset Centre initiative, which will actively raise and invest funds digitally based on blockchain technology through Islamic asset-backed tokens. This positions

---

30 US Department of State, 2025, "2025 investment climate statements," US Department of State, accessed December 11, 2025, https://www.state.gov/reports/2025-investment-climate-statements/.

31 OECD, *OECD Investment Policy Reviews: Mauritius 2024* (Paris: OECD Publishing, 2024), https://doi.org/10.1787/442d4c99-en.

Labuan at the intersection of Islamic finance and digital assets, potentially creating new opportunities for cross-border structuring.

Malaysia's extensive DTA network now covers over seventy countries. Recent additions include the DTA with the Maldives signed in May 2023. Malaysia continues to follow a treaty model based closely on the OECD Model Tax Convention, with selective adoption of UN Model provisions reflecting its position as both a capital-importing and capital-exporting country.

Malaysia is preparing for the implementation of Pillar Two of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. Multinational enterprise groups with consolidated revenue of EUR 750 million or more will be subject to a minimum effective tax rate of 15% in each jurisdiction. This will have implications for low-tax structures utilising Labuan or Mauritius.

The IRBM continues to expand its exchange of information network and has been active in Mutual Agreement Procedures to resolve cross-border tax disputes. The enhanced MAP provisions under the MLI provide additional tools for resolving double taxation arising from transfer pricing adjustments or treaty interpretation disputes.

Pillar Two Implications

The implementation of Pillar Two global minimum tax rules will have significant implications for structures utilising the Malaysia-Mauritius corridor. In-scope multinational groups (those with consolidated revenues of EUR 750 million or more) will need to assess whether their effective tax rate in each jurisdiction meets the 15% minimum.

For Malaysian groups with Mauritius holding structures, Mauritius's 15% headline rate should meet the minimum threshold, though careful analysis of partial exemptions and other reliefs will be required. For structures utilising Labuan with its 3% effective rate, top-up taxes may be triggered unless the activities fall within exclusions (such as the substance-based income exclusion).

Practitioners should be proactive in advising clients on the potential impact of Pillar Two on their existing structures and planning for restructuring where necessary. The interaction between Pillar Two, bilateral DTAs, and domestic incentive regimes will be a critical area of focus in the coming years.

BEPS and Future Treaty Developments

Both Malaysia and Mauritius have committed to the BEPS Inclusive Framework minimum standards. The PPT already applies to the bilateral treaty, and both countries have implemented Country-by-Country Reporting requirements for large multinationals.

Looking ahead, there may be pressure to renegotiate certain provisions of the DTA to align with more recent OECD and UN Model Convention developments. Areas that could be addressed include the addition of a PE threshold for services, specific provisions for offshore indirect transfers of interests in immovable property, and updated exchange of information provisions meeting current international standards.

PRACTICAL CASE STUDIES

Case Study 1: Malaysian Technology Company Expanding to Africa

A Malaysian technology company wishes to expand its software-as-a-service (SaaS) platform into East African markets, targeting Kenya, Tanzania, and Uganda. The company seeks to minimise withholding taxes on royalties and dividends while maintaining an efficient group structure.

Recommended structure: The Malaysian parent establishes a Mauritius GBC as a regional holding company for African operations. The Mauritius company establishes subsidiaries in Kenya, Tanzania, and Uganda. Software licensing fees flow from the African subsidiaries to Mauritius, benefiting from Mauritius's treaties with these countries. Dividends from Mauritius to Malaysia are subject to 5% withholding (assuming 10% voting control) under the Malaysia-Mauritius DTA.

Key considerations: The Mauritius GBC must satisfy substance requirements, including employing qualified personnel in Mauritius and incurring adequate local expenditure. Board meetings should be held in Mauritius with decisions documented. The Malaysian company should document the commercial rationale for the structure beyond tax benefits to satisfy the PPT.

Case Study 2: Gulf Islamic Investor Accessing Malaysian Opportunities

A Saudi family office seeks to invest in Malaysian halal food processing and Islamic fintech opportunities through a Shariah-compliant structure. The investment is expected to generate both dividend income and eventual capital gains on exit.

Recommended structure: The family office establishes a Mauritius GBC structured as an Islamic private equity vehicle utilising *musharakah* (joint venture) principles. The Mauritius vehicle makes equity investments in Malaysian target companies. Returns are structured as profit shares (characterised as dividends) rather than interest. On exit, capital gains from share disposals are taxable only in Mauritius (the alienator's residence) under Article 13(3) of the DTA.[32]

Key considerations: Shariah compliance requires appointment of a Shariah advisory board and adherence to Islamic investment screening criteria. The structure benefits from Mauritius's 3% effective tax rate on qualifying foreign-source income and Malaysia's abolition of dividend withholding tax. The PPT should be satisfied given the genuine Islamic finance and commercial objectives.

Case Study 3: Interest Income Planning for Infrastructure Financing

A Mauritius-based infrastructure fund provides debt financing to a Malaysian renewable energy project. The fund seeks to minimise Malaysian withholding tax on interest payments.

Analysis: Under the standard DTA provisions, interest is subject to 15% Malaysian withholding tax. However, if the loan qualifies as an 'approved loan' under Section 2(1) of the Malaysian Income Tax Act 1967, the interest may be wholly exempt from Malaysian tax under Article 11(3). Alternatively, if the lender is a Mauritius government entity (including statutory bodies or Bank of Mauritius), Article 11(4) provides complete exemption.

For commercial lenders not qualifying for exemption, the 15% rate applies. However, practitioners should compare this with

---

32 Malaysia-Mauritius DTA, art 13(3).

Malaysia's domestic withholding tax rate (also 15%) and consider whether any bilateral investment treaty protections apply.

CONCLUSION

The Malaysia-Mauritius Double Taxation Agreement, as modified by the MLI, provides a robust framework for cross-border investment between two strategically positioned international financial centres. For Malaysian practitioners, the treaty opens pathways to African markets through Mauritius's extensive treaty network and sophisticated fund structuring capabilities. For Mauritian practitioners and their international clients, the DTA facilitates access to Malaysia's Islamic finance infrastructure and Southeast Asian markets.

The key practical considerations for structuring under this treaty are substance, beneficial ownership, and the Principal Purpose Test. Arrangements must demonstrate genuine commercial rationale beyond tax benefits, with adequate presence and decision-making in the relevant jurisdiction. The Malaysian courts have consistently upheld the supremacy of treaty provisions over domestic law, providing certainty for taxpayers who properly claim treaty benefits.

The withholding tax rates under the DTA—5%/15% on dividends, 15% on interest, and 15% on royalties—are comparable to Malaysia's other major treaty partners. While not the most favourable rates available, they provide a solid foundation for cross-border planning, particularly when combined with Mauritius's access to African markets and Malaysia's Islamic finance incentives.

The convergence of Islamic finance capabilities between Malaysia and Mauritius presents a particularly compelling opportunity. Malaysia's world-leading Islamic finance ecosystem, combined with Mauritius's emerging Islamic private equity infrastructure and African treaty network, creates a natural corridor for Shariah-compliant capital flows. The Labuan tax exemptions for Islamic finance activities (2024-2028) and Mauritius's IFSB membership signal both countries' commitment to developing this sector.

Looking ahead, practitioners should monitor developments in Pillar Two implementation, which may affect the viability of certain low-tax structures. The interaction between global minimum tax rules,

bilateral DTAs, and domestic incentive regimes will require careful analysis. Additionally, potential treaty renegotiations to incorporate updated OECD/UN Model provisions may affect planning strategies.

As both countries continue to enhance their financial services offerings and expand their treaty networks, the Malaysia-Mauritius investment corridor is poised for significant growth. Practitioners who understand the technical requirements of the DTA, the substance requirements of both jurisdictions, and the strategic opportunities available will be well-positioned to serve clients seeking to capitalise on this potential.

The case studies presented in this article illustrate the practical application of the DTA to common cross-border scenarios. Whether advising on African expansion strategies, Islamic investment structures, or infrastructure financing, practitioners should approach each matter with careful attention to substance requirements, beneficial ownership, and anti-avoidance provisions. With proper planning and documentation, the Malaysia-Mauritius DTA remains a valuable tool in the international tax practitioner's toolkit.

DISCLOSURE

In accordance with journal publication guidelines, the author discloses that generative artificial intelligence tools were used in the preparation of this manuscript solely to improve readability and language, and for the translation of the abstract into Malay. The substantive content, legal analysis, juristic interpretations, and conclusions are entirely the work of the author.