

# Tax Alert

## Kenya-Mauritius Double Taxation Avoidance Agreement (DTA)



### 1. Background

On the 30 June 2020, the Cabinet Secretary for National Treasury and Planning gazetted the Double Taxation Agreement (DTA) signed between Kenya and Mauritius on 10 April 2019.

### 2. The scope of the DTA

The DTA applies to all persons who are residents of Kenya or Mauritius or both countries and applies to all income taxes or taxes which are of a substantially similar character to income tax.

The DTA shall remain in force indefinitely but either of the Contracting States may terminate it by giving written notice of termination to the other State not later than the 30 June of any calendar year starting five years after the year in which the DTA enters into force.

### 3. Key highlights on the provisions of the DTA

Particulars	Rates as per DTA and Protocol (%)	Non-Resident Tax Rates in Republic of Kenya (%)	Non-Resident Tax Rates in Republic of Mauritius (%)
Dividends	8	15	Exempt
Interest	10	15	Exempt / 15
Royalties	12	20	15
Technical fees	10	20	10
Capital gains on sale of shares	0 / 5	5	Exempt

### 4. Other considerations under the DTA

	Provision	Treatment under the DTA
a)	Taxation of income from immovable property	<ul style="list-style-type: none"> <li>Income derived from immovable property, agriculture or forestry, may be taxed where the property is situated.</li> </ul>
b)	Income from Business profits	<ul style="list-style-type: none"> <li>Profits of an enterprise shall be taxable only in that state unless the enterprise carries on business in the other contracting state through a permanent establishment.</li> </ul>
c)	Income from shipping and air transport	<p>The profits of a contracting state from the following sources shall be taxable in that state:</p> <ul style="list-style-type: none"> <li>profits of a contracting state arising from the operation or rental of ships or aircraft in international traffic; and</li> <li>profits from the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic.</li> </ul>

	Provision	Treatment under the DTA
d)	Dependent personal services	<ul style="list-style-type: none"> <li>▪ Salaries, wages and other similar remuneration shall be taxable only in the State from which such income is derived.</li> <li>▪ Remuneration derived by a resident of a contracting state from employment exercised in the other State shall be taxable only in the first-mentioned State if:               <ol style="list-style-type: none"> <li>a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and</li> <li>b) The remuneration is paid by, or on behalf of an employer who is not a resident of the other State; and</li> <li>c) The remuneration is not borne by a permanent establishment which the employer has in the other State.</li> </ol> </li> </ul>
e)	Directors Fees and Remuneration of Top-Level Managerial Officials	<ul style="list-style-type: none"> <li>▪ Directors' fees and similar payments derived by a resident of a contracting state from a company which is a resident of the other State may be taxed in that other State.</li> <li>▪ Salaries, wages and similar remuneration derived by a resident as an official in a top-level managerial position of a company which is a resident of the other State may be taxed in that other State.</li> </ul>
f)	Entertainers and sportspersons	<ul style="list-style-type: none"> <li>▪ Income derived by a resident of a contracting state as an entertainer or as a sportsperson from his personal activities that are exercised in the other State, may be taxed in that other State.</li> </ul>
g)	Pensions	<ul style="list-style-type: none"> <li>▪ Pensions and other similar payments arising in a contracting state and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other State.</li> <li>▪ However, payments made from a public scheme which is part of the social security system of a State shall only be taxable in that State.</li> </ul>
h)	Government service	<ul style="list-style-type: none"> <li>▪ Salaries, wages and other similar remuneration, other than pension, paid by a State to an individual in respect of services rendered to that State or Subdivision, shall be taxable only in that State.</li> <li>▪ However, such salaries, wages and other similar remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who:               <ol style="list-style-type: none"> <li>(a) Is a national of that State; or</li> <li>(b) Did not become a resident of that State solely for the purpose of rendering the services</li> </ol> </li> </ul>
i)	Professors and Teachers	<ul style="list-style-type: none"> <li>▪ A professor or teacher who makes a temporary visit to one of the States for a period not exceeding 2 years for the purpose of teaching or research at an educational institution in that State and who is, or immediately before such visit was, a resident of the other State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.</li> <li>▪ The above shall not apply to income from research if such research is undertaken not in the public interest but w for the private benefit of a specific person or persons.</li> </ul>

	Provision	Treatment under the DTA
j)	Students and Business Apprentices	<ul style="list-style-type: none"> <li>▪ A student or business apprentice in a State solely for the purpose of his education, or immediately before being so present was, a resident of the other State, shall be exempt from tax in the first-mentioned State on payments received for the purposes of his maintenance, education or training.</li> <li>▪ In respect of grants, scholarships and remuneration for employment not covered in the provision above, a student, business trainee or apprentice, shall be entitled during such education or training to the same exemptions or reliefs available to residents of the State which he is visiting.</li> </ul>
k)	Other Income	<ul style="list-style-type: none"> <li>▪ Items of income of a resident of a State, wherever arising, not dealt with in the foregoing expressly within the DTA shall be taxable only in that State.</li> </ul>
l)	Diplomatic Agents and Consular Officers	<ul style="list-style-type: none"> <li>▪ The DTA does not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.</li> </ul>
m)	Other Benefits of the DTA	<ul style="list-style-type: none"> <li>▪ Non-discrimination of nationals and residents of each State.</li> <li>▪ Assistance in the collection of taxes.</li> <li>▪ Exchange of information between authorities of the two States.</li> </ul>

## 5. Conclusion

The DTA is a welcome boost to the already robust business relationships between Mauritius and Kenya. The favourable tax rates under the DTA are likely to increase trade and investments between the two countries.

The DTA is domesticated under the provisions of the Income Tax Act of Kenya, which provide that the benefit of tax exemption or reduced tax rates under a DTA shall only be available to individual residents of treaty state and for corporates, where fifty per cent or more of the underlying ownership is held by an individual or individuals who are residents of the other treaty state. Companies listed on a securities exchange of the treaty partner state are exempt from this requirement. This requirement will limit the number of persons who can benefit from the DTA.

The High Court declared the previous DTA between Kenya and Mauritius illegal following a petition by the Tax Justice Network – Africa (TJNA). The High Court ruled that the DTA was not approved by the National Assembly as stipulated in the Statutory Instruments Act, 2013.

If you have any specific queries or require further advisory on the implications of the DTA and how the same impacts on your business, please contact us.



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