

Protocol

amending the Agreement signed on 7 October 2011

between

the Federal Republic of Germany

and

the Republic of Mauritius

for the Avoidance of Double Taxation

and of Tax Evasion

with respect to Taxes on Income

The Federal Republic of Germany  
and  
the Republic of Mauritius,

Desiring to conclude a Protocol amending the Agreement signed on 7 October 2011 between the Federal Republic of Germany and the Republic of Mauritius for the Avoidance of Double Taxation and of Tax Evasion with respect to Taxes on Income, and the attached Protocol, hereinafter referred to as "the Agreement",

In order to implement the measures of the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting according to their respective positions,

Have agreed as follows:

Article 1

The preamble of the Agreement shall be replaced by the following:

"The Federal Republic of Germany  
and  
the Republic of Mauritius,

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),

Have agreed as follows:"

Article 2

The following paragraph 5 shall be added after paragraph 4 of Article 25 of the Agreement:

"(5) Where,

- a) under paragraph 1, a person has presented a case, except a case that is not eligible for arbitration, to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a final decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph."

### Article 3

The Protocol to the Agreement shall be amended as follows:

1. The following paragraph 7 shall be inserted after paragraph 6:

“7. With reference to paragraph 5 of Article 25:

The following cases are not eligible for arbitration under paragraph 5 of Article 25 of the Agreement:

- a) any case in which an anti-abuse rule laid down in domestic law or in a tax treaty (e.g. Parts 4, 5 and 7 of the German External Tax Relations Act (Außensteuergesetz), section 42 of the German Fiscal Code (Abgabenordnung), section 50d(3) of the German Income Tax Act (Einkommensteuergesetz), section 90 of the Mauritius Income Tax Act or any subsequent provisions replacing, amending or updating this general anti-avoidance rule, or any other specific anti-avoidance rule) has been applied;
- b) any case involving conduct for which the taxpayer, a person acting on his behalf, or a related person has been found guilty by a court of a tax offence under the relevant revenue laws of each Contracting State;
- c) any case that concerns items of income or capital that are not taxed by a Contracting State because they are not included in the taxable base in that Contracting State or because they are subject to an exemption or zero tax rate provided under the domestic tax law of that Contracting State;

- d) any case that falls within the scope of application of the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), as amended, or any subsequent regulation;
- e) any case in which double taxation on items of income or capital was avoided by using the credit method instead of the exemption method, based on the application of a provision of domestic or tax treaty law;
- f) any facts determined as part of a “mutual agreement on facts” (tatsächliche Verständigung) – as defined in the German Federal Ministry of Finance circular of 30 July 2008 (Federal Tax Gazette I 2008, p. 831), as amended, or any subsequent regulation – between the tax administration of a Contracting State and the taxpayer.”

2. The existing paragraphs 7 and 8 are renumbered as paragraphs 8 and 9 respectively.

#### Article 4

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) This Protocol shall enter into force on the day after the exchange of the instruments of ratification and shall have effect in both Contracting States as follows:

- a) in the Federal Republic of Germany:

- (i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Protocol entered into force;
- (ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Protocol entered into force; and

b) in Mauritius:

- (i) in the case of taxes withheld at source, in respect of amounts paid on or after 1 July of the fiscal year next following the year in which the Protocol entered into force;
- (ii) in the case of other taxes, in respect of taxes levied for any year of assessment beginning on or after 1 July of the year next following the year in which the Protocol entered into force.

Done at Berlin this 29<sup>th</sup> of October 2021 in two originals, each in the German and English languages, both texts being equally authentic.

For the  
Federal Republic of Germany



For the  
Republic of Mauritius

