UNMASKING TREATY SHOPPING: THE FIGHT THAT INDIA HAS AGAINST GLOBAL TAX DODGING

Khushi Verma, Dharmashastra National Law University, Jabalpur, M.P.

Nikhil Gupta, IMS Unison University, Dehradun, Uttarakhand

ABSTRACT

Economic liberalisation and cross-border capital mobility have greatly transformed the international investment landscape, but have also spawned complex avoidance of taxes, like treaty shopping and shell entities abuse. These systems use the loopholes in Double Taxation Avoidance Agreements (DTAAs) to lose revenue, especially in developing economies such as India. Traditionally, capital gains tax avoidance was done through the use of routes including India-Mauritius and India-Singapore DTAAs, which raised a question of base erosion and profit shifting (BEPS). It is estimated that USD 100-240 billion of developing countries are lost every year as a result of these practices by OECD and UNCTAD.

India has reacted to this by taking a multi-pronged strategy: renegotiations of treaties, introducing anti-abuse rules, including the Principal Purpose Test (PPT) and the Limitation of Benefits (LOB) clauses of the Multilateral Instrument (MLI), and introducing the General Anti-Avoidance Rules (GAAR) in 2017. Even judicial interpretations have changed- permissive view adopted in Azadi Bachao Andolan to substance-over-form in Vodafone. On one hand, the reforms have reduced the abuse of treaties and increased the equity of taxes, but on the other hand, it has raised concerns regarding discouragement of actual foreign investment, which can be confirmed by the decrease in FDI inflows through Mauritius since 2016.

The obstacles are still multidimensional, starting with transparency issues in beneficial ownership to disparities in the global application of BEPS standards. On top of legal and economic aspects, perpetrating distributive justice and equity, treaty shopping takes a disproportionate toll on domestic taxpayers. The solution, therefore, requires a balance between investor confidence, revenue protection, and international cooperation, and the changing framework in India provides insight into what other developing economies can learn.

Keywords: Tax justice – Fairness in the tax system, Distributive justice – Fair distribution of wealth and resources in society, Cosmopolitan ethics – Belief in moral obligations that go beyond national borders, Fiscal distortions

– Unnatural changes in the economy due to unfair tax rules, Hedge funds – Investment funds that take high-risk bets to get high returns.

INTRODUCTION

Economic liberalisation and increased cross-border capital movements have transformed the face of global investment, but at the expense of creating complex tax avoidance schemes that take advantage of arising gaps and differences in taxation systems of various countries. The most notable of these are treaty shopping, which involves the structuring of the investment in the form of intermediary jurisdictions to seek advantage of the favourable provisions under the Double Taxation Avoidance Agreement (DTAA), and the use of shell entities that are generally devoid of any real economic activities but fall under the covered territory of the treaty benefits. Such practices have specifically been exposed in India, which has a network of more than 90 DTAAs (CBDT, 2023). Previously, investors could enjoy the Mauritius route, whereby they did not pay capital gains tax in India until the 2016 protocol changes to source-based taxation under the India-Mauritius DTAA 1983. The same was the case when it came to the India-Singapore DTAA, which, until 2017, used the Mauritius provision based on a "most favoured nation" clause[1].

These economic losses are enormous: OECD and UNCTAD (2022) estimate the total losses annually to Base Erosion and Profit Shifting (BEPS) to be USD 100 to 240 billion annually by developing countries as a group, and treaty abuse is observed to be a key driver of this[2]. India has acted by implementing various policy measures, such as adopting General Anti-Avoidance Rules (GAAR) in 2017 (Income-tax Act, 1961), the renegotiation of several principal DTAA, and the implementation of the Multilateral Instrument (MLI) in 2019, which introduced Principal Purpose Test (PPT) and other abuse-related provisions into its treaty network[3]. Judicial strategies have been transformed from the permissive position in *Union of India v. Azadi Bachao Andolan (2003)* to a more fact-centered analysis after *Vodafone International Holdings BV v. Union of India (2012).*

---

[1] Himanshu Bajaj, Neha Saxena and Viraj Mathuria, 'Principal Purpose Test Clarified by India's Central Board of Direct Taxes' (*Alvarez & Marsal*, 2025) <https://www.alvarezandmarsal.com/insights/principal-purpose-test-clarified-indias-central-board-direct-taxes > accessed 5 September 2025.

[2] Organisation for Economic Co-operation and Development (OECD), *Base Erosion and Profit Shifting (BEPS)* <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html > accessed 24 August 2025.

[3] OECD, *Prevention of Treaty Abuse - Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6* (OECD 2019) 120.

CONCEPTUAL FRAMEWORK

- **Double Taxation Avoidance Agreement (DTAA):**

A Double Taxation Avoidance Agreement is an accord between one or more nations to evade the same income being taxed in both the origin country and the destination country. It gives tax rights and tends to either decrease or abolish withholding tax, and relieves through deduction exemptions or credit. The DTAAs ensure that there is cross-border trade, investments, and economic bilateralism because tax burdens on cross-border economic activity are alleviated through the provision of DTAAs. Such agreements are modelled on, e.g., OECD and UN Model Tax Conventions, and aim to offer stability to taxpayers as well as safeguard the revenue base of each state (OECD, 2023)[4].

- **Shell Companies**:

A shell company is a shell company which is a legal entity that has little or no real business, assets, or people. Although such entities may have valid uses, like holding assets, management of intellectual property, or during a merger, they can also be created in the so-called low-tax jurisdiction to deduct profit, disguise ownership, or obtain preferential tax treatment. The creation of shell companies helps to take advantage of tax accords, evade the control of watching authorities, or lack of transparency in the movement of funds. International tax avoidance schemes using them are a common cause of their abuse, with governments around the world introducing reforms against abuse and strengthening rules against empty shells that require “substance” in corporate and tax legislation[5].

- **Treaty Shopping**:

Treaty shopping arises where such people or companies direct their investments through a third country so as to gain the advantages of DTAA, in order to avoid investing between the source and residence countries. This will usually be done through the establishment of a shell company in a treaty-friendly jurisdiction. Take the example of India and Mauritius, where the DTAA was being commonly used to prevent capital gains tax in the wake of Indian investments. Treaty shopping contradicts the need for tax treaties and wastes tax revenues, which has brought about

---

[4] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017* (OECD Publishing 2017).
[5] Fabiano Angélico and Lígia Zagato, ‘Definitions: Money-Laundering, Tax Havens and Shell Companies’ (2017) 10 JMLC 1, 16 <https://www.jstor.org/stable/resrep20590.7?seq=1 > accessed 5 September 2025.

such anti-abuse rules and provisions as the Principal Purpose Test (PPT) and the Limitation on Benefits (LOB) rules[6].

- **Difference between tax avoidance and tax evasion:**

Tax avoidance and tax evasion are two remarkably different terms in taxation that every primarily in terms of legality and ethics. Tax avoidance involves the way in which the individual organizes his/her revenues so that the benefits of the provisions and or loopholes in the tax law are fully exploited to minimize the tax payable. Justice Reddy refers to it as the art of avoiding paying tax, without committing a crime, whereas black Law Dictionary refers to it as an action referring to the minimization of tax liability by availing legally available tax planning opportunities. It is not unlawful as sometimes it may be morally bad, since it takes advantage of the flaws in the system without necessarily going against the law. Examples would be investing in tax-free plans or arranging investments through those jurisdictions that have beneficial Double taxation avoidance agreements. Conversely, tax evasion can be described as an illicit attempt to evade tax by concealing income, falsifying books and records, or providing inaccurate information. It is a direct flouting of the law which may lead to penalties, fines or jail. The examples include underreporting income, fabricating fake bills, or concealing unreported money in offshore accounts. In a nutshell, tax avoidance is within the guidelines of the law, but tax evasion crosses the line[7].

INTERNATIONAL FRAMEWORK

- **OECD and UN Model Conventions:**

The primary intent behind any of these model treaties is to provide the foundation for the negotiation of treaties related to double taxation between the nations. **The OECD Model Treaty** at its core, deals with two developed nations that have comparable tax regimes. OECD currently comprises 34 member countries, including the US, UK, Australia, and places emphasis upon the rights of the state of residence to tax the individual or corporation[8]. Whereas **the UN Model Treaty,** which was launched in 1980, with the chief goal of acting as a guide for tax treaties between developed and developing nations. The UN Model comprises 200

[6] Jus Mundi, 'Treaty Shopping' <https://jusmundi.com/en/document/publication/en-treaty-shopping > accessed 24 August 2025.
[7] T P Ostwal and Vikram Vijayaraghavan, 'Anti-Avoidance Measures' (2010) 22 NLSIR 59, 62.
[8] Kanga and Palkhivala, *The Law and Practice of Income Tax,* vol 2 (11th edn, LexisNexis 2020) 2008.

member countries. Unlike the OECD Model, it prioritizes the source country, i.e., where the tax has been generated, instead of the state of residence[9].

- **OECD/G20 BEPS:**

BEPS or Base Erosion and Profit Sharing is an initiative led by the Organisation of Economic Co-operation and Development, who present a report on double non-taxation and comprehensive action plans to tackle this global issue. The principal purpose of this initiative is to prevent the strategic exploitation of loopholes in the taxation policy of any nation by individuals/corporations/MNCs that subsequently lead to double non-taxation or low/no taxation[10]. The report was presented in 2013 along with 15 action plans and was later finalised after 2 years in 2015.

The entire BEPS action plan is based on the fundamental changes required to prevent double non-taxation and treaty abuse. Action plan 6 constitutes as a key plan to impede the treaty abuse and deter any individual or corporation from taking advantage of the bilateral tax treaty by way of the "Principal Purpose Test" and "Limitation of Benefit" clause in DTAA.

1. Principal purpose test: As discussed previously, a taxpayer is allowed to arrange his finances or conduct such transactions in such a manner that eventually leads to maximisation of tax benefit under the tax regime/ tax treaties between nations. However, if the finances or such business transactions are made solely to avoid taxes, or to take unfair advantages of the given taxation policy, then it results in treaty shopping. To curb the abuse of tax treaties, a test called the "principal purpose test" has been adopted by multiple nations, whereby if a transaction/ arrangement of finance is solely for tax avoidance, then such an individual/ incorporation is not entitled to any kind of benefit under tax treaties[11].

2. Limitation of Benefit Clause: With a view to deterring tax treaty abuse, multiple nations have revised their tax treaties to insert a limitation of benefit clause. As the name

---

[9] ibid.

[10] Organisation for Economic Co-operation and Development (OECD), *Base Erosion and Profit Shifting (BEPS)* <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html > accessed 24 August 2025.

[11] Regan van Rooy, 'The Principal Purpose Test: Accessing the Benefits of Double Tax Agreement Just Got a Bit Trickier' (*Regan van Rooy*) <https://reganvanrooy.com/the-principal-purpose-test-accessing-the-benefits-of-double-tax-treaties-just-got-a-bit-trickier > accessed 24 August 2025.

suggests, this clause aims to curb or limit down misutilisation of any tax treaty. For example, India-Mauritius treaty, if there is any alienation of shares that contributes to capital gain thereafter, it will be liable to pay taxes to the state of residence of the country whose shares were eliminated, that is 50% if such a transaction is made between 1st April 2017 to 31st March 2019.

- **Multilateral Instrument:**

BEPS Action Plan, which comprises 15 such action plans that provide comprehensive guidelines to curb treaty abuse/ tax avoidance. The Action plan 1 to 14 establishes a framework for the digital economy, artificial avoidance of PE, avoidance of capital gain, and a dispute resolution mechanism[12]. However, to individually apply these action plans by renegotiating more than 2500 bilateral tax treaties would take a substantial period[13]. With the intention of prompt and efficient implementation of the BEPS action plan, a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [commonly referred to as Multilateral Instrument (MLI)] was introduced to modify pre-existing treaties. On 7th July 2017, in Paris, 67 countries chose to be the signatories of MLI, India being one of the signatories.

MLI does not renegotiate the tax treaties nor does it substitute the treaty between any two nations; it only operates alongside the tax treaty. The only purpose of MLI is to modify the operation of the treaty and the extent of modification depends on the terms agreed between the countries.

INDIAN LAWS

- **Evolution of DTAA:**

Double taxation means the imposition of tax on the same income in more than one jurisdiction. There are two main rules of taxation: a) the residence rule b) the source of income rule. In the case of India, an assessee is taxed via the residence rule of taxation[14]. The general rule i.e., residence rule of taxation of an individual or an entity, the country of residence enjoys the

---

[12] Kanga and Palkhivala, *The Law and Practice of Income Tax,* vol 2 (11th edn, LexisNexis 2020) 2002.
[13] Direct Taxes Committee, The Institute of Chartered Accountants of India, *Technical Guide on BEPS Action Plans and Multilateral Instrument ("MLI")* (The Institute of Chartered Accountants of India, 2024) <https://kb.icai.org/pdfs/PDFFile664ad951457514.25434204.pdf > accessed 5 September 2025.
[14] Girish Ahuja and Ravi Gupta, *Income Tax* (22nd edn, Bharat Law House 2021) 2544.

complete right to tax an assessee on all his income. However, this becomes an issue in the contemporary globalised economies all across the globe, where multiple MNCs are situated in a country other than the residence/ domicile or citizenship of such individual or entity is concerned. There comes a source rule according to which the source country or the country where the income is generated also holds the right to tax the income. If both the residence country as well as source country impose the tax, then it will lead to an unfavourable situation for taxpayers known as double taxation[15]. In order to eliminate the problem of double taxation, Section 90 of the Income Tax Act, 1961, empowers the central government to agree with any territory outside India known as a Double Taxation Avoidance Agreement[16]. The provision is further elucidated by the following explanation:

1. **Section 90(1):** The section provides a legitimate framework for the formulation of DTAA by the central government with any territory/ country outside India, whereby the government is entitled to provide provisions for:

    a. Grant of relief if income has been taxed in both countries/ if income is chargeable in both countries/ if the income is chargeable by either of the countries.

    b. Exchange of information between the countries to prevent tax avoidance and also, for the recovery of income tax generated via this act or any corresponding law of another country.

2. **Section 90(2):** In general, the provision of the treaty entered into by the central government prevails over the domestic law of the country[17]. However, if the provisions of the Income Tax Act, 1961 are more beneficial as compared to the agreement which the central government has entered into, then the assessee is to be governed through the provisions of the act only to the extent they are more beneficial to that assessee.

3. **Section 90(3):** Notwithstanding anything contained in Section 90(2), the provision of Chapter X-A shall apply to the assessee even though such provisions are not beneficial to him.

[15] Union of India v. Azadi Bachao Andolan, (2003) 263 ITR 706 (SC).
[16] The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961, § 90 (India).
[17] Union of India v. Azadi Bachao Andolan, (2003) 263 ITR 706 (SC).

4. **Section 90(4):** In a situation where a term is neither defined in an agreement nor in a statute, then its meaning shall be regulated through the notification of the central government in the official gazette on this behalf.

5. **Section 90(5):** If an assessee is not a resident of the country that is party to the agreement, then such an assessee is not entitled to any benefit arising out of such an agreement. The person has to be a resident of at least one of the two countries entering into the DTAA.

Furthermore, any specified association in India may enter into a DTAA with a specified association outside the territory of India, whereby section 90A[18] laid down the provision similar to the one under section 90 of this act.

Moreover, in instances where DTAAs are exploited for tax avoidance or treaty shopping, such agreements are not deemed ultra vires to Section 90 of the Income Tax Act, 1961, as established in the Union of India v. Azadi Bachao Andolan case[19].

- **GAAR:**

Before the GAAR, or General Anti-Abuse Rule, there was no specific set of provisions that dealt with anti-abuse of the tax treaties. Previously, in India, there were two ways of addressing this issue: firstly, by judicial precedents through common law principles, and secondly, by a specific anti-avoidance rule (SAAR)[20] such as section 40A(2), which prevents tax avoidance by disallowing excessive and unreasonable payments to related parties[21], section 2(22)(e) which prevents tax payment disguised as loan[22]. Section 92-92F, which addresses transfer pricing manipulation, i.e., shifting of taxable profit between associate companies to low tax jurisdictions[23], etc.

While SAARs continued to address targeted tax avoidance practices, GAAR was introduced as a group of provisions that covers complex and unstipulated challenges that remained unanswered during the drafting of specific rules. Justice Murphy said it best in Federal

[18] The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961, § 90A (India).
[19] Union of India v. Azadi Bachao Andolan, (2003) 263 ITR 706 (SC).
[20] Kanga and Palkhivala, *The Law and Practice of Income Tax,* vol 2 (11th edn, LexisNexis 2020) 2105.
[21] The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961, § 40A(2).
[22] The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961, § 2(22)(e).
[23] The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961, § 92.

Commissioner of Taxation v Hancock, "The resource of ingenious minds to avoid revenue laws has always been inexhaustible and for that reason it is neither possible nor safe to say in advance what must be found…"[24]. Additionally, these inexhaustible modes of tax avoidance posed significant concerns that give rise to uncertain provisions in relation to GAAR. While GAAR was introduced in the Canadian jurisprudence, it was challenged on the grounds of uncertainty; however, the Supreme Court of Canada had given a purposive interpretation to GAAR[25]. Moreover, GAAR is a tool to strike down any attempt at tax avoidance that is not understood at the time of drafting of provision.

The GAAR provisions were first introduced in the Direct Code Bill, 2009, and later came into effect from 2018-19 onwards. A new chapter XA (section 95-102) of the Income Tax Act,1961, was incorporated to address the provisions related to the General Anti-Avoidance Rule (GAAR)[26].

1. **Section 95** states notwithstanding anything contained in this act, the given provision empowers tax authorities to declare any arrangement as an impermissible avoidance arrangement.

2. **Section 96** provides the primary purpose is to define arrangements that are construed to be obtained with an intention of tax benefit, such as a violation of the arm's length principle, abuse of existing provisions, lack of commercial substance, or if conducted, lacks the bona fide intention. Also, tax authorities have the power to disregard the whole or part of the arrangement.

3. **Section 97** of this act defines an arrangement lacking commercial substance, involving round tripping, disguising the value, ownership, or control of funds, and accommodating parties.

4. **Section 98** allows authorities to recharacterize transactions, deny tax benefits, alter income or expense computations, or reject benefits under DTAAs.

5. **Section 99** sets out connected persons or accommodating parties for tax avoidance,

[24] Federal Commissioner of Taxation v. Hancock, (1961) 8 ATR 328.
[25] Canada Trustco Mortgage Co v. Canada, 2005 2 S.C.R. 601 (Supreme Court Canada).
[26] The Income Tax Act 1961, No. 43, Acts of Parliament, 1961, §§ 95-102.

treating such arrangements as a single entity to prevent manipulation.

6. **Section 100** allows GAAR to be applied alongside the other provisions of this act.

7. **Section 101** provides for future guidelines to refine GAAR's application.

8. **Section 102** acts as a definition clause for the interpretation of provisions given for the application of GAAR.

- **Anti-abuse provision under DTAA:**

Tax treaties have undergone multiple modifications/ alterations over the period, especially after the BEPS Action Plan and MLI, and numerous provisions have been included for tax avoidance. Some prominent examples would be[27]:

1. Limitation of Benefit (LOB) clause to counter treaty shopping,

2. Arm's length principle incorporated to related party transactions to avoid transfer pricing manipulation,

3. The concept of "Beneficial Ownership".

Also, multiple specific provisions to address tax avoidance and treaty abuse by an assessee.

- **India and MLI:**

The multilateral instrument, signed by India in 2017 and ratified in June 2019, effective from October 2019, embodied several BEPS action plans such as principle purpose test, mutual agreement procedure, and artificial avoidance of permanent establishment, among others. These action plans are the joint efforts of G20 as well as OECD economies to tackle the growing crisis of tax avoidance and treaty shopping. At the time of incorporation of MLI, India had entered into such agreements with 93 jurisdictions, out of which 22 jurisdictions have ratified with MLI. In the year 2022, 47 jurisdictions have ratified MLI, thereby aligning with India in implementing the BEPS Action Plan.

[27] T.P. Ostwal and Vikram Vijayaraghavan, *Anti-Avoidance Measures*, 22 NLSIR 59, 76 (2010).

CASE STUDY

In the case of *Vodafone International Holdings BV vs. Union of India (2012)*[28] came into existence when Hutchison Essar Limited, the Indian telecom company, had the following structure: Vodafone was a Dutch company with a 67% stake in Hutchison Essar Limited, the Indian telecom company. It was a Transaction made completely outside India and estimated to be worth approximately USD 11 billion, but the Indian Income Tax Department argued that Vodafone had a duty to withhold tax under Section 195 of the Income Tax Act on the basis that by transferring the assets, the nature of the transaction was an inward transfer of an Indian asset.

Vodafone argued that the deal was an offshore transaction between two non-resident companies, and Section 195 only applied when the income was liable to tax in India, and no income was liable to tax in India, as the asset in question was a foreign share. One of the resorts used by the Union of India was that, in substance, the Indian telecom business was really sold, and the corporate layering was just a sham, and so came the transaction within the tax net of India under Section 9.

In 2008, the Bombay High Court ruled against Vodafone and in favour of the tax authorities, claiming that the Indian government was within its right to tax indirect transfer of Indian property and that Vodafone was obliged to withhold tax. What the court did was to apply substance rather than form, thus putting Section 9 into a much broader context.

Nevertheless, this was later overturned by the Supreme Court in 2012 in favor of Vodafone, further elucidating that at the time of the transaction, Indian tax did not apply to offshore transfers that were indirect, as it was made known that the government made a retrospective amendment to cover such cases.

CRITICISM AND CHALLENGES

The long shadow of shell entities has remained a hitch towards curtailing the menace of treaty shopping and the economic consequences thereof. The attribution of real economic activity is rendered extremely challenging by shell companies, usually multi-layered through multiple jurisdictions, often with nominee directors, an impenetrable trust, and a lack of clarity of

[28] Vodafone International Holdings bv v. Union of India, (2012) 341 ITR 1.

beneficial ownership, and serves not only to slow investigations but to prove frustrating to enforcement agencies and the openness to accountability as well. The concept of beneficial registry ownership is already developed in international principles, such as by FATF and OECD, and is becoming increasingly uniform, with gaps in its realization; in some countries where they are implemented, authorities and law enforcement face incomplete or slow access, particularly where disclosure regimes are weakened. Such a lack of transparency enables not just tax avoidance, but intricate treaty abuse as well.

The Indian case study of how FDI sourced through Mauritius shows an example of the fiscal distortions caused by treaty shopping. Between 2000 and 2022, the apparent route used by about USD 158 billion-27 per cent of India's overall inbound FDI-moved via Mauritius, mostly by way of a DTAA heavily tilted toward capital gains exemptions[29]. The issue of round-tripping, treaty shopping was well recognized and the Indian government made major amendments of the DTAA in form of protocols which were implemented in April 2016 made effective about the acquisition of share on or after April 1 2017, subjecting the latter to the Indian capital gains tax and attempted to crack down the treaty shopping with relatively low impact on historic investments which existed[30]. The given empirical shows that the FDI of Mauritius decreased (in terms of money) from USD 15.72 billion in 2016-17 to only USD 6.13 billion in 2022-23[31]. However, this change also has its wider trade-offs since the revised treaty appreciably boosted revenue collection, but critics say that it might discourage genuine investors, particularly against portfolio investors and hedge funds that once upon a time utilized the Mauritius route.

Gravity and computable general equilibrium models of the economy introduce finer detail in the fiscal story. A single study that uses a gravity model shows that although a zero capital gains tax in Mauritius was a factor that would draw investment, it is not the only decisive factor, and

[29] ALMT Legal, India-Mauritius Tax Treaty: The Amending Protocol and What Lies in the Fine Print' *(Lexology,* 28 May 2024*)* <https://www.lexology.com/library/detail.aspx?g=0ddd9942-d8e8-43e4-91dc-29d60efd2ef1&utm_ > accessed 8 September 2025.

[30] Squire Patton Boggs, 'Updates on India's Tax Treaties with Mauritius and Its Impact on the India-Singapore Tax Treaty' (*Squire Patton Boggs*) <https://www.squirepattonboggs.com/~/media/files/insights/publications/2016/10/updates-on-indias-tax-treaties-with-mauritius-and-its-impact-on-the-india-singapore-tax-treaty/updatesonindiastaxtreatieswithmauritiusanditsimpactontheindiasingaporetaxtreaty.pdf > accessed 8 September 2025.

[31] Grant Thornton Bharat, 'India-Mauritius Tax Treaty: Impact of New Protocol' (*Grant Thornton Bharat*, 2024) <https://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/alerts/india_mauritius_tax_treaty_impact_of_new_protocol.pdf > accessed 8 September 2025.

others like per capita GDP, cultural affinity, proximity, and legal infrastructure are also important. Wider empirical surveys of tax treaties indicate that research findings with regard to the effect of FDI are mixed and depend on country, industry, and treaty details. As a trend in reaction to the anti-avoidance reforms, the adoption of the India-Mauritius protocol will probably have enhanced the tax equity and minimized the aspect of revenue leakage, but the overall net impact of the India-Mauritius protocol on FDI will still depend on how the investors will respond to the flexible cost of compliance, treaty certainty, and investment strategy.

At the geopolitical level, efforts to stamp out treaty shopping run up against the tension between sovereignty, enforcement capacity, and competing development imperatives. Supranational initiatives—like the OECD's BEPS Action 6 minimum standards including Principal Purpose Tests (PPT)—set norms but rely on state buy-in and domestic implementation, which can diverge widely across jurisdictions[32]. For instance, India and Mauritius incorporated a PPT into the 2024 DTAA amendment protocol, clarifying that treaty benefits require bona fide economic substance and thus formalizing an anti-abuse safeguard. However, many low- and middle-income countries lack the legal expertise, data infrastructure, and negotiation leverage to embed robust anti-avoidance clauses or impose stringent beneficial ownership checks; as a result, they remain more vulnerable to revenue drain through treaty shopping[33].

Ethically, pseudo-personality treaty shopping leads to a more fundamental issue of justice, an ethical issue, and distributive justice. These are legally acceptable, but normatively questionable, as they undermine the social contract and allow stronger parties to shift the tax load on less mobile fundamental sources such as labour and consumer demand, at the cost of public goods and welfare states and equal growth. Rawlsian ideas on the foregone revenue through treaty abuse due to the least privileged states, and the utilitarian analysis would give the argument that the well-being of society is more than the spoils reaped by treaty-abusing MNEs. In addition, cosmopolitanism ethics promote the existence of moral obligation with respect to taxes globally by making sure that the practice does not continue to reinforce cross-border inequality by redistributing tax returns to developing nations. However, in practical politics, state administrations frequently steer between competing demands: protection of

[32] Archana Rao, 'India-Mauritius DTAA Amendment Closes Tax Avoidance Loophole' (*India Briefing*, 16 April 2024) <https://www.india-briefing.com/news/india-mauritius-dtaa-amendment-addresses-tax-avoidance-loophole-32041.html > accessed 8 September 2025.
[33] OECD, OECD Investment Policy Reviews: Mauritius 2024 (*OECD Publishing,* 2024) <https://doi.org/10.1787/442d4c99-en > accessed 8 September 2025.

revenues, attractiveness to investors, fairness of law and moral responsibilities that the states hold before the world.

CONCLUSION

There are seldom clear-cut solutions to the problem of treaty shopping and abuse of shell entities, because the problem arises out of a balancing between a laudable goal of stimulating cross-border investment and the compelling need to protect national tax revenue. The initial shape of the Double Taxation Avoidance Agreements (DTAAs) was aimed to ensure both states and investors about fairness, certainty and predictability. Nevertheless, gaps in the writing and execution of them have been consistently used to enable efforts of tax avoidance at scale, particularly in underdeveloped economies such as India. The two most popular ways to get out of capital gains tax Mauritius and Singapore routes, which serve as vivid explanations of how the abuse of the treaties loses not only the government tax revenue but also undermines the very principles of international cooperation in the field of taxes.

The manner in which India addressed this rising issue has been multi-pronged as it incorporated law-making policies, court action, as well as the diplomatic layer. The implementation of General Anti-Avoidance Rules (GAAR) in 2017, the renegotiation of key DTAAs, and the involvement of India in the multilateral process being conducted by the OECD in Base Erosion and Profit Shifting (BEPS) through the Multilateral Instrument (MLI) is a major progress. The reforms do point to an irreversible shift in approach, being changed significantly away by the more permissive posture taken in Azadi Bachao Andolan to a more substance-oriented test of transactions, as in Vodafone. However, the already observed post-2016 protocol drop in FDI inflows via Mauritius underscores the natural trade-off: on one hand, reforms can help to promote tax justice, on the other hand, they may disincentivise the very real investors, casting doubts on proportionality and overall economic effects in the long run.

Actions like BEPS Action Plan 6, Principal Purpose Test (PPT), and Limitation of Benefits (LOB) clauses have taken centre stage in the fight against treaty abuse worldwide. However, the lack of consistent implementation at the domestic level is also an important issue because the administrative capacities in various countries are uneven. Since base erosion is usually most common in developing countries, they are especially vulnerable, as they frequently lack the negotiation power and institutional capacity to facilitate implementation of useful beneficial ownership checks.

Ethically, treaty shopping is associated with issues of distributive justice, equity, and trust of the people. Although technically permitted, such practices exploit mainly the multinational corporate players at the cost of the everyday taxpayers and thus worsen inequality. Thus, the complex of methods should be used in fighting treaty shopping, i.e., reinforcing national structures, renegotiating treaties, fostering international collaboration, and inculcating morality into taxation policies. Such a change of position in India is suggestive of a significant improvement; however, it is only an ultimate balancing of the interests of investor confidence, revenue protection, and national sovereignty with that of global equity that will prove sustainable.