The double taxation agreement and its revision

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The agreements of 1981 and 1994

Singapore and India concluded a first agreement for the avoidance of double taxation on 20 April 1981. It was replaced by the present agreement, signed on 24 January 1994, which entered into force on 27 May 1994 and took effect from 1 January 1994 in Singapore and from 1 April 1994 in India.[1] The agreement followed the OECD model in its structure but kept several features of the United Nations model that India favoured as a capital-importing state. Dividends could be taxed in the source state at up to 10 per cent where the beneficial owner was a company holding at least 25 per cent of the shares and at up to 15 per cent in other cases. Interest on bank loans bore a ceiling of 10 per cent and other interest a ceiling of 15 per cent.[2]

Capital gains were the decisive point. In its original version, Article 13 allowed India to tax gains from the alienation of shares in an Indian company, so that a Singapore investor selling Indian shares remained within the reach of Indian tax.[3] Under that version Singapore offered no advantage over most other jurisdictions for portfolio investors. Mauritius did, since its treaty with India allocated the right to tax such

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gains to the state of residence, while Mauritius itself did not tax them. In the 1990s most foreign portfolio and private equity capital for India therefore went through Port Louis.

The 2005 protocol: the Mauritius link and the first limitation of benefits

The protocol signed in New Delhi on 29 June 2005 changed the position. It replaced paragraphs 4 to 6 of Article 13 with a rule under which gains from the alienation of property not covered by the first three paragraphs, including shares, were taxable only in the state of residence of the person disposing of them.[4] Singapore thereby obtained the same treatment of capital gains that Mauritius enjoyed.

Two conditions made the bargain acceptable to India. The first was a limitation of benefits clause, which denied the exemption to a resident whose affairs had been arranged with the primary purpose of obtaining it and to shell or conduit companies. A company was deemed to be a shell if its annual expenditure on operations in Singapore was below S$200,000 in the 24 months before the gain arose, while companies listed on a recognised stock exchange were deemed to have substance.[5] The second condition tied the exemption to Mauritius. Under Article 6 of the protocol, the capital gains rule, the information provision, the limitation of benefits and the review mechanism were to remain in force only as long as the India–Mauritius treaty allocated gains on shares exclusively to the state of residence.[6]

The protocol thus gave Singapore parity with Mauritius on the condition that Singapore entities show real expenditure. The threshold of S$200,000 was modest for a fund manager with staff and offices, although prohibitive for a letterbox company. The design favoured the kind of investment platform that Singapore wished to attract: holding companies with directors, employees and decision-making in Singapore. It also reflected an Indian concern that treaty benefits should be confined to capital with a real link to Singapore, beyond a registered address.

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The 2011 protocol: exchange of information

On 24 June 2011 the two governments signed a second protocol, which replaced Article 28 with an exchange of information clause in the form of the international standard. The competent authorities were to exchange information that is foreseeably relevant to the administration of domestic taxes of every kind. A state could not refuse a request merely because the information was held by a bank, another financial institution, a nominee or a fiduciary. The protocol entered into force on 1 September 2011 and applied to taxable periods beginning on or after 1 January 2008.[7]

The timing was no coincidence. Singapore had committed itself to the international standard shortly before, under pressure from the OECD and the G20, as Chapter II of Part E describes. In India, the debate on undeclared wealth held abroad, known as "black money", had become a political issue of the first order. The 2011 protocol gave Indian tax authorities a legal route to bank information in Singapore for the first time. The end of banking secrecy for foreign tax purposes, which Part E analyses in general, therefore had an Indian chapter of its own.

The 2016 protocol: source taxation of capital gains

In May 2016 India amended its treaty with Mauritius to tax gains on shares acquired from 1 April 2017 in the source state.[8] Since the Singapore exemption depended on the Mauritius rule, the change in Port Louis would have ended it automatically. The two governments chose to renegotiate. On 30 December 2016 Singapore's High Commissioner Lim Thuan Kuan and Sushil Chandra, Chairman of the Central Board of Direct Taxes, signed a third protocol in New Delhi. It entered into force on 27 February 2017, while its provisions on capital gains and on the limitation of benefits took effect from 1 April 2017.[9]

The new Article 13 distinguished by the date of acquisition. Gains on shares acquired before 1 April 2017 remained taxable only in the state of residence. Gains on shares acquired on or after that date could be taxed in the state where the company was resident. For a transitional period from 1 April 2017 to 31 March 2019

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the source state could tax such gains at no more than half of its domestic rate.[10] IRAS presented the result as a preservation of the existing exemption for investments made before 1 April 2017 and stressed that the substance requirements, unique among India's treaties, would continue to ensure that only residents with real economic activities could benefit.[11]

The limitation of benefits moved from the protocol into the treaty as a new Article 24A. It retained the primary purpose test, the definition of shell and conduit companies, the expenditure threshold of S$200,000 or 5 million rupees and the exception for listed companies. For grandfathered shares the expenditure test had to be met in each of the two twelve-month periods preceding the gain, as the 2005 protocol had already provided in a footnote. For gains in the transitional period the test looked to the preceding twelve months.[12] The protocol also deleted the Mauritius link and inserted Article 28A, under which the treaty does not prevent either state from applying its domestic rules against tax avoidance and evasion. A new paragraph in Article 9 obliged each state to make corresponding adjustments in transfer pricing cases.[13]

The multilateral instrument and the principal purpose test

Both states signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on 7 June 2017. Singapore ratified it on 21 December 2018 and India on 25 June 2019. In Singapore the changes took effect through the Income Tax (Singapore–India) (Avoidance of Double Taxation Agreement) Order 2019, in force from 1 October 2019.[14] The most important addition is Article 29A on the prevention of treaty abuse. A treaty benefit is denied where it is reasonable to conclude that obtaining it was one of the principal purposes of an arrangement, unless granting it would accord with the object and purpose of the treaty. For withholding taxes the principal purpose test applies in Singapore to payments from 1 January 2020 and for other taxes to basis periods beginning on or after 1 April 2020.[15]

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India's treaty with Singapore now contains three layers of anti-abuse rules: the limitation of benefits in Article 24A, the principal purpose test in Article 29A and India's domestic general anti-avoidance rules, which Article 28A expressly preserves. A Singapore holding company must therefore show both substance in Singapore and a commercial purpose for its existence.

Substance in practice: Fullerton and Tiger Global

The interplay of these layers has been tested in Indian tribunals. The case of Fullerton Financial Holdings, a Singapore company wholly owned by Temasek, is instructive. Fullerton had invested in Fullerton India Credit Company in 2008 and sold its entire stake in the financial year 2021–22, realising long-term capital gains of 6.81 billion rupees, which it claimed as exempt under Article 13(4A). The tax department argued that the company lacked substance, since it had no employees or premises of its own and relied on staff of an affiliate. The Mumbai bench of the Income Tax Appellate Tribunal accepted certificates of IRAS and of the auditors showing expenditure above the threshold of S$200,000. It held that the company was neither a shell nor a conduit and found no indication that obtaining treaty benefits had been a principal purpose of the investment.[16]

The commentators observed that the tribunal had blended the limitation of benefits with the principal purpose test, which are distinct provisions. They also noted that it did not refer to the circular of the Central Board of Direct Taxes of 2025, under which grandfathered shares fall outside the principal purpose test. Both points show that the law remains unsettled at the level of detail that matters for practitioners.

The long-running dispute over the exit of Tiger Global from Flipkart through Mauritius entities in 2018 shows the opposite risk. The Indian revenue authorities denied the treaty exemption on the ground that control and management of the Mauritius companies lay outside Mauritius and that the structure was designed to avoid Indian tax. After the Delhi High Court had ruled for the investor in 2024, the Supreme Court of India set that decision aside in January 2026 and held the gains taxable in India. According to the first commentaries, the court treated the tax residency certificate as evidence that cannot override anti-avoidance rules and held

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that grandfathering protects genuine investments while offering no shelter to arrangements designed to avoid tax.[17] Although the case concerned Mauritius, managers of Singapore structures read it closely, because the questions it decided – where effective control lies, how much weight a tax residency certificate carries and how far domestic anti-avoidance rules reach into treaty grandfathering – arise equally under the Singapore treaty. The Fullerton decision of the Mumbai tribunal preceded the judgment and will have to be read in its light.

Common misconception

Singapore's first place among the sources of Indian FDI is often read as a measure of Singaporean wealth invested in India. The statistics record the last country from which the money arrives. A large part of the flows comes from investors in North America, Europe, the Middle East and Japan who invest through Singapore funds and holding companies, and some of it comes from Indian residents themselves. The figure measures Singapore's function as a platform, which depends on treaty access, substance and the confidence of Indian authorities.

Notes

1. IRAS, Agreement between Singapore and India for the Avoidance of Double Taxation, synthesised text with the MLI (iras.gov.sg, accessed November 2026): date of conclusion 24 January 1994, entry into force 27 May 1994, effective 1 January 1994 (Singapore) and 1 April 1994 (India); earlier agreement signed on 20 April 1981 (Annex E). ↩
2. IRAS, synthesised text, Article 10(2) (10 % if the beneficial owner is a company owning at least 25 % of the shares, 15 % in all other cases) and Article 11(2) (10 % on loans granted by a bank or similar financial institution, 15 % in all other cases). ↩
3. IRAS, synthesised text, Article 13(5) in the 1994 version: "Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State." ↩

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4. IRAS, synthesised text, Annex D (Protocol signed at New Delhi on 29 June 2005), Article 1 replacing paragraphs 4, 5 and 6 of Article 13: such gains "shall be taxable only in that State"; Article 7: entry into force on 1 August 2005. ↩
5. IRAS, synthesised text, Annex D, Article 3: denial of benefits where affairs were arranged with the primary purpose of taking advantage of Article 1; definition of a shell/conduit company; deemed shell if total annual expenditure on operations is less than S$200,000 or Rs 50,00,000 in the immediately preceding 24 months; deemed not to be a shell if listed on a recognised stock exchange. ↩
6. IRAS, synthesised text, Annex D, Article 6: Articles 1, 2, 3 and 5 "shall remain in force so long as" the India–Mauritius agreement provides that gains from the alienation of shares are taxable only in the state of residence of the alienator. ↩
7. IRAS, synthesised text, Annex C (Second Protocol signed at New Delhi on 24 June 2011), Article 1: new Article 28, paragraphs 1 ("foreseeably relevant" information on taxes "of every kind and description") and 5 (no refusal "solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity"); note on the second protocol: signed on 24 June 2011, in force on 1 September 2011, applicable to taxes relating to taxable periods beginning on or after 1 January 2008. ↩
8. Protocol amending the India–Mauritius Double Taxation Avoidance Convention, signed at Port Louis on 10 May 2016; source-based taxation of capital gains on shares acquired on or after 1 April 2017 with grandfathering of earlier investments and a transitional rate of 50 % until 31 March 2019. ↩
9. IRAS, "Singapore and India Sign New Protocol to Update Bilateral Avoidance of Double Taxation Agreement (DTA)", media release of 30 December 2016: signed by H.E. Mr Lim Thuan Kuan, Singapore's High Commissioner to India, and Shri Sushil Chandra, Chairman of the Central Board of Direct Taxes; IRAS, synthesised text, note on the third protocol: entered into force on 27 February 2017, provisions effective from that date except Articles 2, 3

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and 4, effective from 1 April 2017; IRAS, "Tax Agreements with India and Uruguay Enter Into Force" (iras.gov.sg, accessed November 2026). ↩

10. IRAS, synthesised text, Annex B (Third Protocol), Article 2: new paragraphs 4A (shares acquired before 1 April 2017 taxable only in the state of residence), 4B (shares acquired on or after 1 April 2017 may be taxed in the state of the company) and 4C (gains arising between 1 April 2017 and 31 March 2019 taxable at no more than 50 % of the domestic rate). ↩

11. IRAS, media release of 30 December 2016: "The updated DTA preserves the existing tax exemption on capital gains for shares acquired before 1 April 2017"; capital gains on shares acquired from 1 April 2017 taxed at 50 % of India's domestic rate during a two-year transition period; the protocol retains "stringent substance requirements which are unique to the Singapore-India DTA". ↩

12. IRAS, synthesised text, Annex B, Article 3: new Article 24A, paragraphs 1–5; deemed shell if annual expenditure on operations is less than S$200,000 or Rs 5,000,000 "for each of the 12-month periods in the immediately preceding period of 24 months" (paragraph 4A cases); listed companies deemed not to be shells; paragraph 3(b): twelve months for paragraph 4C cases; Annex D, footnote 1 to Article 3: the 24 months "shall be calculated by referring to two blocks of 12 months". ↩

13. IRAS, synthesised text, Annex B: Article 1 (new Article 9(2), corresponding adjustments), Article 4 (deletion of Articles 1, 3, 5 and 6 of the 2005 Protocol from 1 April 2017) and Article 5 (new Article 28A on domestic anti-avoidance law). ↩

14. IRAS, synthesised text, note on the MLI: signed on 7 June 2017; ratified by Singapore on 21 December 2018 and by India on 25 June 2019; the Income Tax (Singapore-India) (Avoidance of Double Taxation Agreement) Order 2019 entered into force on 1 October 2019. ↩

15. IRAS, synthesised text, Annex A, new Article 29A: a benefit shall not be granted "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

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any arrangement or transaction"; section 3: in Singapore the MLI has effect for taxes withheld at source on amounts paid on or after 1 January 2020, and for other taxes where income is derived in a basis period beginning on or after 1 April 2020. ↩

16. Khaitan & Co., Legal 500 / Mondaq, 19 November 2025: the Tribunal relied on IRAS and KPMG certificates, held the taxpayer was not a shell or conduit and assessed the PPT holistically, considering commercial rationale, governance and economic substance; the commentators note that the Tribunal did not refer to CBDT Circular No. 1 of 2025, which places grandfathered shares outside the PPT.; Bijal Ajinkya, Avin Jain and Aanchal Jain (Khaitan & Co.), "Mumbai Tribunal Grants Treaty Exemption to Singapore Company on Sale of Grandfathered Shares; Dismisses Allegations of Conduit Entity and PPT Applicability", Legal 500 / Mondaq, 19 November 2025, on *Fullerton Financial Holdings Pte Ltd v ACIT* [TS-1458-ITAT-2025]: taxpayer wholly owned by Temasek; investment in FICCL in 2008; sale in FY 2021-22; long-term capital gains of INR 681 crore claimed as exempt under Article 13(4A); department's arguments on lack of employees and premises. ↩

17. Nexdigm, "Supreme Court Upholds Revenue's Right To Tax Tiger Global's Flipkart Exit Gains", Legal 500 / Mondaq, 22 January 2026: the Supreme Court allowed the Revenue's appeal and overturned the Delhi High Court; a TRC has evidentiary value but "does not override anti-avoidance provisions"; grandfathering "protects genuine investments" and gives no blanket immunity to avoidance-driven arrangements; emphasis on the absence of operations, employees and decision-making in Mauritius; *Business Today*, "Tiger Global Flipkart exit: what the Supreme Court ruling means for cross-border tax rules", 17 January 2026: the Delhi High Court had ruled in the investor's favour in 2024; the detailed judgment was awaited at the time of the report. Supreme Court of India, *Authority for Advance Rulings (Income Tax) v Tiger Global International II Holdings*. ↩

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