



**Western India
Regional Council of
The Institute of
Chartered Accountants of India**
(Set up by an Act of Parliament)

Multilateral Instrument (MLI) for Beginners

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**WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

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Foreword

The world has become a much smaller place in the span of a few decades. Today, we can conduct business literally at the speed of light with fibre-optic cables supporting digital business transactions.

Companies have taken advantage to expand globally and conduct businesses across continents. This expansion has also brought with it questions on taxation due to the fact that a single entity might conduct business over quite a few countries. The possibilities of tax avoidance came into play and due to the sheer number of countries and tax jurisdictions involved, the matter becomes quite complicated. This was the issue till recently, when the Multilateral Instrument (“MLI”) was created as a step forward towards preventing treaty abuse by entities operating in multiple countries under the Base Erosion and Profit Shifting (“BEPS”) Action Plan.

MLI looks to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into world-wide bilateral tax treaties. MLI allows Governments across nations to modify the application of their tax treaties in a synchronized manner without renegotiating each of these treaties bilaterally. Today, MLI is signed by over 130 countries and many others have expressed their intention to do so. India has signed the MLI in 2017 and it has been applicable on various Indian tax treaties from April 2020.

This complex instrument has been explained in a lucid and simple manner in this book which is an achievement in itself. This publication covers all the critical and necessary definitions, structure and content related to MLI, for the greater benefit of all members, students and financial professionals everywhere.

I extend my regards to CA. Santosh Jagdale, CA. Radhakishan Rawal and CA. Rakhi Modi who have endeavoured to make the complex MLI into an easy to understand subject. I compliment the efforts put in by Regional Council Members CA. Rakesh Alshi, CA. Murtuza Kachwala and CA. Manish Gadia in bringing this e-publication.

We are confident that this publication will be an important educative tool and will enable us to get a better and deeper understanding of this subject.

CA. Lalit Bajaj
Chairman, WIRC



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Preface

With an increased trade and business between various economies of the world, the world is truly moving towards our very own ancient Indian concept of “*Vasudhaiva Kutumbakam*” i.e. the world is one family. Due to this increased interface, various tax policies of Multinational Enterprises (‘MNEs’) have undergone a change which has led to issues relating to shifting of profits from a high tax jurisdiction to a low tax jurisdiction.

Under the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), more than 125 countries have collaborated through various BEPS Actions to block tax avoidance strategies that exploit gaps and mismatches in tax rules.

The Multilateral Instrument (MLI) is an outcome of BEPS Action 15 of the OECD/G20 Inclusive Framework. It offers a mechanism/ common platform for governments to swiftly transpose results from the BEPS into their bilateral tax treaties worldwide.

MLI allows governments to modify the application of their own network of tax treaties in a synchronised manner in order to incorporate the agreed anti-avoidance provisions emanating from the BEPS Actions (without renegotiating each of these treaties bilaterally).

India being a pioneer in the OECD/G20 BEPS project, has *interalia*, amongst other Actions, have implemented the provisions of MLI in its tax treaties. The Finance Minister of India signed the MLI in Paris on 7 June 2017 thereafter India notified a total of 93 tax treaties as Covered Tax Agreement to which it intends to apply the MLI.

To abreast its members and student community at large with this important concept, the WIRC of the ICAI has brought out the E-Handbook on ‘Basics of MLI’.

My sincere thanks to CA. Lalit Bajaj, Chairman, WIRC for being guiding force behind all initiatives being taken by the Committee.

I am appreciative of the time and efforts put in by CA. Murtuza Kachwala (Secretary, WIRC) and CA. Manish Gadia (Vice-Chairman, International Tax Committee).

I appreciate the time and efforts put in by CA. Santosh Jagdale who have authored this E-Handbook and grateful to CA. Radhakishan Rawal and CA. Rakhi Modi for their review and constructive inputs.

I am sure that this Handbook would be of great use for our members and students of ICAI having keen interest in the subject of International Taxation.

Best Wishes

CA. Rakesh Alshi

Chairman – International Taxation Committee



Preface

Globalisation has impacted the economies of various countries and their tax policies. Base Erosion and Profit Shifting ('BEPS') has been one of the important perspectives which has attracted the attention of the tax authorities of the developed as well as the developing nations. The Indian Government has been bringing various reforms which have lead to increase in investment in almost every sector of the Indian economy. India is preferred over other developing countries for cross border investments. Increase in cross border trade and rendering of services, has further lead to various taxation issues which are interesting and also complex at times.

Due to aggressive tax planning strategies adopted by many large MNEs, several countries had raised questions on the morality of the aggressive and harmful tax practices adopted by such multi-national companies. As a result, the Organization for Economic Cooperation and Development ('OECD') started to shape out 'BEPS' plans to mitigate harmful tax practices to ward off the negative effects of MNEs' tax avoidance strategies on national tax bases.

Further, to strengthen tax treaties, the concept of multilateral Instrument ('MLI') has been brought in. India too is committed to address the issues of tax evasion and thus has signed this multilateral Instrument in June, 2017. India had notified a total of 93 tax treaties as CTAs to which it intends to apply the MLI.

MLI is one of the most important BEPS action Plan for implementing treaty measures to avoid tax treaty abuse. The multilateral instrument is a treaty/ standard template, which is one element of the OECD BEPS project, designed to help implement the recommended measures to avoid tax treaty abuse.

Keeping in mind the need of the hour, the WIRC of the ICAI has brought out the publication on 'Basics of MLI' to provide necessary support and guidance to its members to update themselves in international taxation area. The subject of international taxation has been assuming importance rapidly and has become one of the areas in which our members are taking keen interest. This area of practice has great prospects in today's time and also in the years to come.

I am sure that this publication would be of immense use to the members and students of the ICAI, people working in corporates and various other sectors of the economy and other readers etc. I am sure that this publication would be able to bring conceptual clarity to the members and other readers, which is indeed the need of the hour.

CA. Manish Gadia

Vice-Chairman – International Taxation Committee, WIRC



Preface

WIRC is pleased to publish this insightful publication on Multilateral Instruments [MLI]. The fact that our members continue to provide high calibre education through research and collaboration is testament to their dynamism which is the characteristic of the Western India Regional Council (WIRC) of The Institute of Chartered Accountants of India (ICAI).

The Multilateral Instruments (MLI) is a unique measure created to ensure that jurisdictions can implement procedures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax location.

The MLI will further enhance dispute resolution mechanisms in accordance with minimum standards agreed by signatory countries of which India is one. In 2019, India deposited its instrument of ratification to implement tax treaty related measures to prevent BEPS and which has been applicable on various Indian DTAA's from April 2020.

WIRC has a history of regularly publishing relevant and practical guides, which go far in increasing the depth of knowledge for all members and students. This is one of those books which go far in making a complex instrument easier to understand for all professionals. This publication is relevant not only for Chartered Accountant but also legal, finance, and industry professionals everywhere.

I take this opportunity to thank CA. Santosh Jagdale for his efforts in producing this reference guide within a very short span of time. I am confident that this book will help provide clarity to all members and students towards understanding the MLI thus continuing the WIRC tradition of providing world class education to all clients and stakeholders.

CA. Murtuza Kachwala
Secretary, WIRC

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Notes:

- 1) This Handbook on Multilateral Instrument has been prepared based on the MLI position as on 30th April, 2020.
- 2) In each article of MLI Instrument, while analysing the impact of respective article of MLI on DTAA's, the reference has been given to India's DTAA with certain countries for easier understanding and ready reference. In other words, the list of applicability of MLI to the treaties given in each respective article is not exhaustive.

1

Introduction to Multilateral Instrument

Certain Multinational Enterprises ('MNEs') plan their worldwide business operations in such a manner so as to avoid taxes or for shifting profits from high tax jurisdiction to the low tax jurisdictions. Due to aggressive tax planning strategies adopted by many large MNEs, there was a lot of hue and cry in respect of negligible amount of corporate taxes paid by the big MNEs such as Google, Starbucks, and Facebook etc. Several countries had raised questions on the morality of the aggressive and harmful tax practices adopted by such multi-national companies. As a result, the Organization for Economic Cooperation and Development ('OECD') started to shape out a plan to mitigate harmful tax practices to ward off the negative effects of MNEs' tax avoidance strategies on national tax bases.

Base Erosion and Profit Shifting ('BEPS') has not only been a major cause of concern for developed countries but also for developing countries like India, since it has made it difficult for them to have their share of taxes. To mitigate the difficulties being faced on account of BEPS, OECD has come out with various BEPS action plans. Since successful implementation of BEPS action plan is the need of the hour, for broad and consistent implementation of BEPS Action Plans, OECD/G20 Countries have established "Inclusive Framework" in June 2016. Nearly 100 countries and jurisdictions have become members since then and have commenced implementation of some of the BEPS action plans. Further, to strengthen tax treaties, the concept of multilateral Instrument ('MLI') has been brought in. India too is committed to address the issues of tax evasion and thus has signed this multilateral Instrument in June, 2017.

The multilateral instrument is a treaty/ standard template, which is one element of the OECD BEPS project, designed to help implement the recommended measures to avoid tax treaty abuse. Countries will be able to use MLI framework to implement some of the BEPS action plans relating to double tax treaties.

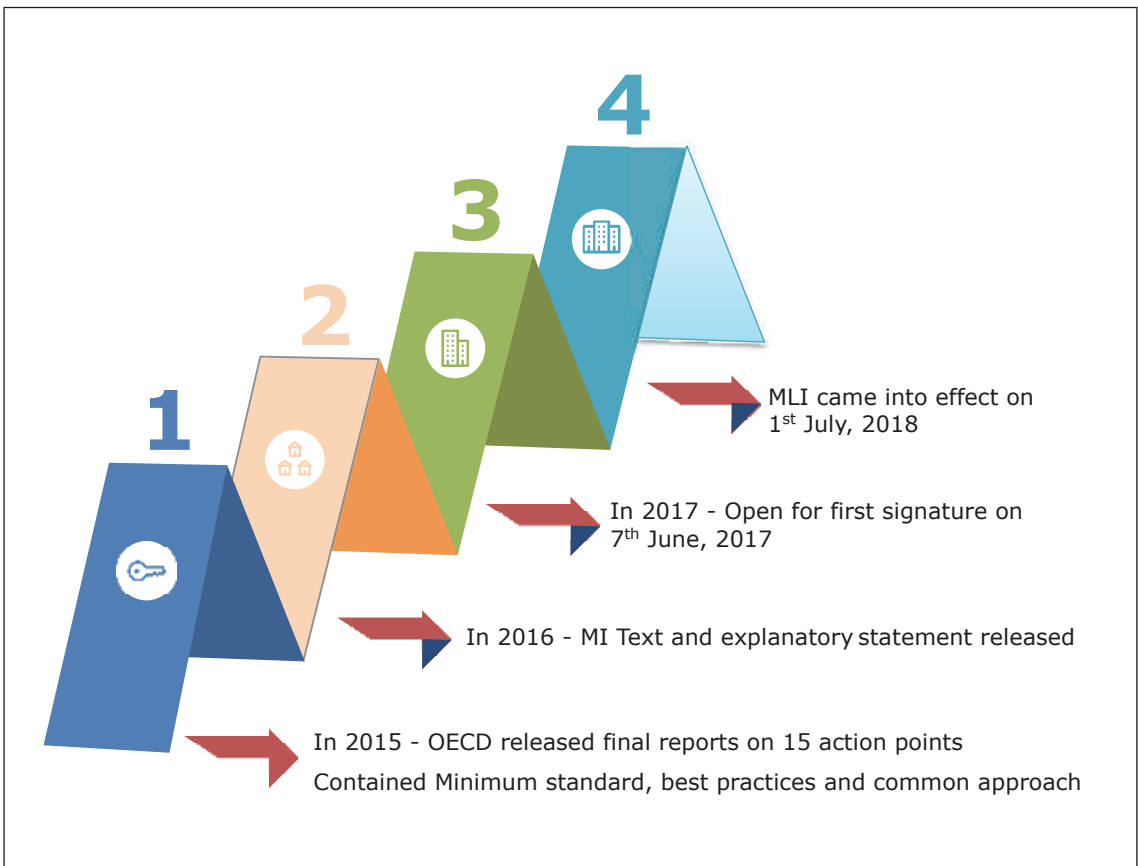
As on 30th April, 2020 a total of 94 countries have signed the MLI out of which around 46 have already been ratified, deposited and made effective (including India). The Finance Minister of India signed the MLI in Paris on June 07, 2017 on behalf of the India. India had notified a total of 93 tax treaties as CTAs to which it intends to apply the MLI.

The MLI responds to this call for swift action by implementing the BEPS measures which require changes to tax treaties. In the words of OECD Secretary-General, Angel Gurría, “The entry into force of this multilateral convention marks a turning point in the implementation of OECD/G20 efforts to adapt international tax rules to the 21st Century.”

MLI is one of the most important and crucial BEPS action Plan for the purpose of implementing tax treaty related measures in order to prevent base erosion and profit shifting (‘BEPS’).

2 Historical Developments in MLI

MLI is developed by an Ad hoc Group of 100+ jurisdictions. This instrument is signed by developed and developing economies around the world and it is open for signature by any country. On 7 June 2017, a high-level signing ceremony took place in Paris. India also participated in this ceremony and became a signatory to MLI. This convention was signed by Arun Jaitley Ji, Union Finance Minister for India, along with representatives of 65 countries. The historical development in MLI is explained below:



Basic Understanding and Features of MLI

3A. Basic Understanding about MLI

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting is one of the outcomes of the OECD/G20 Project to tackle Base Erosion and Profit Shifting ('BEPS Project') i.e. tax planning strategies that exploit gaps and mis-matches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.

The Action Plan 15 of Base Erosion Profit Shifting ('BEPS') Report, "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties", concluded that a multilateral instrument, providing an innovative approach to enable countries to swiftly modify their bilateral tax treaties.

There are about 2,600 double tax treaties in the world, some 500 among industrialized economies, approximately 800 among developing economies and about 1,300 between industrialized and developing economies. It will be a never-ending exercise if countries want to re-negotiate each tax treaty with the other county partner, to bring in intended changes within the existing bi-lateral treaty framework. Such measure will be inefficient and lacks uniformity, besides being a slow and everlasting process. MLI acts as a master template (sort of a layer above the existing tax treaties) to bring in changes alongside existing bilateral treaties, at one go. MLI will also result in more certainty and predictability for businesses, and a better functioning international tax system for the benefit of society at large.

It is one of the most important BEPS action Plan for implementing treaty measures to avoid tax treaty abuse. The multilateral instrument is a treaty/ standard template, which is one element of the OECD BEPS project, designed to help implement the recommended measures to avoid tax treaty abuse. Countries will be able to use MLI framework to implement some of the BEPS action plans relating to double tax treaties.

The functionality of MLI is given below:

- MLI does not replace existing tax treaties
- MLI modifies bilateral tax treaties in a synchronised, fast and consistent manner
- One negotiation, one signature, one ratification - Avoids renegotiation of each tax treaty
- MI will not function in the same way as a protocol

Abuse of tax treaties is an important source of BEPS. The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project alongside existing bilateral tax treaties in a synchronised and efficient manner. These measures help combat (a) treaty abuse, (b) improve dispute resolution, (c) prevent the artificial avoidance of permanent establishment status and (d) neutralise the effects of hybrid mismatch arrangements. Under OECD / G20 BEPS project, Action 15 was formulated for “Developing a MI to modify bilateral tax treaties.”

3B. Features of MLI

The key features of MLI instrument are captured below in tree diagram:



4 Rationale behind Introduction of Base Erosion and Profit Shifting ('BEPS')

- **Treaty Shopping**

In simple words, “treaty shopping means that a taxpayer “shops” into the benefits of a treaty which normally are not available to him and to this end he generally incorporates a corporation in a country that has an advantageous tax treaty.” In other words, creation of artificial intermediary companies in low or no tax jurisdiction(s) by adopting aggressive tax planning / avoidance strategy to exploit loopholes, gaps and mismatch in tax laws.

- **Artificially shifting profits**

Large MNEs aims to artificially shift profits from high tax jurisdiction to the low or no tax jurisdictions where there is no economic value addition activity is being taking place.

- **Avoidance of PE**

MENs artificially avoids the permanent establishment status ('PE') via various ways like PE in 3rd state, specific activity exemptions, commissionaire arrangements and similar arrangements etc.

- **Aggressive tax planning strategies**

There are various aggressive tax planning strategies includes round tripping strategy, Ring Fencing technique, Tax Inversion, Tax Heavens etc.

- **Controlled Foreign Corporations ('CFC' Regulations)**

CFCs are corporate entities incorporated in an overseas low tax jurisdiction and controlled directly or indirectly by residents of a higher tax jurisdiction (Parent State). Since each corporate entity is treated as a separate legal entity, the profits earned by such CFCs are not taxed at the owner level until they are distributed. CFCs tend to earn passive income; such income is not distributed, thereby resulting in its deferral in the Parent State. It is to curb such tax avoidance that CFC Regulations are legislated by various countries.

- **Other Rationale**

1. *Hybrid arrangements* - Use of such techniques to exploit mismatches in tax laws
2. *Adverse impact for economies* - in terms of tax revenues, tax sovereignty and tax fairness
3. *Loss of Global Corporate Tax Revenue* - As per OECD, there are annual losses of 8-10% of global corporate income tax revenues. OCED entrusted with task to come up with Actions Plans to counter BEPS practices of corporates and to counter such practices the BEPS Project was conceptualized.

Rationale behind Introduction of MLI

- **Challenges faced**
 1. Difficulty in renegotiating network of more than 2,000+ tax treaties involving more than 100 participating countries
 2. Changes to model tax conventions are not sufficient as tax treaties are not in tandem with model tax conventions.
- **Implement tax treaty related BEPS measures**

MLI is to facilitate swift implementation of tax treaty related BEPS measures. The main objective is:

 1. To swiftly modify existing bilateral treaties in a synchronized and efficient manner to implement treaty related BEPS measures
 2. To avoid the need for renegotiation of each tax treaty.
- **Negotiation time period**

It takes several years for completing negotiation with respect to one treaty. It might take 8-10 years.
- **Treaty abuse**

The multilateral instrument is a treaty/ standard template, which is one element of the OECD BEPS project, designed to help implement the recommended measures to avoid tax treaty abuse. There are various tax planning strategies to abuse treaty provisions viz. Treaty shopping, Tax heavens, CFC, Preferential IPR Regimes, Floating artificially subsidiary companies etc.

- **OECD's initiatives**

To enable this, in Feb 2015, OECD released the mandate for negotiation of MLI under Action 15 which stated:

1. Establishing an ad-hoc group to conduct work on MLI Participation in MLI preparation was open to all interested countries, including non-OECD or G20 members, on voluntary basis Participation by each was on equal basis.
2. India has been one of the participants in the Ad hoc group and hence been an active participant in the negotiation of MI.

6

Structure of MLI Instrument and Its Articles

6A. Structure of MLI Instrument

The MLI contains total 39 articles which are divided into 7 parts. The broad structure of MLI is given below in tabular format:

<i>Sr. No.</i>	<i>Chapter/ Part</i>	<i>MLI Article</i>	<i>Title</i>	<i>Types of Provisions</i>
1	Part I	1 and 2	Scope and Interpretation of terms	Substantive BEPS changes + Specific implementation rules to modify existing bilateral tax treaties
2	Part II	3 to 5	Hybrid mismatch arrangements a) Transparent entities b) Dual-resident entities c) Elimination of double taxation	
3	Part III	6 to 11	Treaty abuse a) Purpose of tax treaties b) Prevention of treaty abuse c) Dividend transfer transactions d) Capital gains e) PE in Third state f) Taxation of own residents	
4	Part IV	12 to 15	Preventing artificial avoidance of permanent establishment a) Commissionaire and similar model b) Specific activity exemptions c) Splitting-up of contracts	
5	Part V	16 and 17	Improving dispute resolution a) Mutual agreement procedure b) Corresponding adjustments	

<i>Sr. No.</i>	<i>Chapter/ Part</i>	<i>MLI Article</i>	<i>Title</i>	<i>Types of Provisions</i>
6	Part VI	18 to 26	Arbitration a) Mandatory binding arbitration b) Appointment of arbitrators c) Confidentiality and types of process, d) Cost of proceedings e) Compatibility	
7	Part VII	27 to 39	Finalizing MLI provisions a) Signature and ratifications, acceptance b) Reservations, c) Notifications, d) Entry into force and Entry into effect e) Other final provisions	General implementation provisions

6B. Structure of MLI Article

The structure of an each article of the MLI instrument is generally divided into 'Four' parts viz.

1. Substantive para – This para deals with substantive provisions of BEPS action plan
2. Compatibility para – This para defines relationship of provisions of the MLI and CTA
3. Reservation para – This para deals with reservations from application of relevant Provisions of the MLI article
4. Notification para – This para deals with notifications (Provisional/ Definitive) to be Submitted to the depository of the OECD

The broad detail contained in respect of each Para's is captured below in tabular format:

Structure of MLI Article	
Agreed BEPS measure	<ul style="list-style-type: none"> • Spells out the provisions which are likely to be incorporated in Covered Tax Agreements ('CTA') • This para deals with the substantive provisions of the BEPS action plan • The Convention will apply only to an agreement specifically listed by the parties

Structure of MLI Article	
Compatibility clauses	<ul style="list-style-type: none"> • This clause ensures that the substantive provision as opted for gets incorporated as part of the existing CTA consistent with the reservation/ notification conveyed by the respective countries to the depository • Compatibility clauses define the relationship between the provisions of the Convention and Covered Tax Agreements in objective terms
Reservation (Opt out)	<ul style="list-style-type: none"> • In order to provide flexibility to implement the MLI provisions, countries have the right to reserve certain provisions of the MLI (opt-out by way of reservation) <ul style="list-style-type: none"> A) Choices where a minimum standard can be satisfied in multiple ways b) Choices to apply optional and alternative provisions c) Reservations to opt out provisions or parts of provisions that are not Minimum standards (either with respect to all CTAs, or a subset of CTAs with defined characteristics)
Notifications (Opt in)	<ul style="list-style-type: none"> • The options chosen or reservations made by the countries to be informed to OECD by way of notifications • MLI requires that a provisional list of notifications be provided to the Depository at the time of signature • Later on, party may submit definitive list of notifications to the depository of OECD

7 Compatibility Clauses

In simple words, the Compatibility clauses defines the relationship between the provisions of the MLI convention and Covered Tax Agreements in objective terms and the effect of the MLI provisions may have on Covered Tax Agreements ('CTA').

To ensure clarity and transparency about the application of the Convention, where a provision supersedes or modifies specific types of existing provisions of a Covered Tax Agreement, Parties are generally required to make a notification specifying which Covered Tax Agreements contain provisions of that type. It is expected that Parties would use their best efforts to identify all provisions that are within the objective scope of the compatibility clause.

There are 'Four' types of compatibility clauses used in the MLI convention, the same is captured below in tabular format:

Compatibility Clauses	
Applies "In place of" existing provision	<ul style="list-style-type: none"> • MLI provision intended to replace existing CTA provision • Not intended to apply if provision does not exist in CTA • Apply if all Contracting Jurisdictions make notification with respect to existing provision of CTA
"Applies to" / "Modifies" existing provision	<ul style="list-style-type: none"> • Intended to change application of existing CTA provision without replacing it • Can only apply if there is an existing provision • Apply if all Contracting Jurisdictions make notification with respect to existing provision of CTA
Applies "In the absence of" existing provision	<ul style="list-style-type: none"> • Apply in the absence of existing provision in CTA • Apply if all Contracting Jurisdictions notify absence of an existing provision of CTA
Applies "In place of" / "In absence of" existing provision	<ul style="list-style-type: none"> • MLI provision will apply in all cases • Existing provision of CTA –shall be replaced / superseded • Provision absent in CTA – MLI provision shall be added in CTA

8 Article-Wise Analysis of MLI (All Article 1-39) with practical case studies

1. Article 1 - Scope of the Convention

This Convention modifies all Covered Tax Agreements (CTAs) as defined in Article 2 - para 1.

Observations

The article 1 states that provisions of the MLI shall be applicable to the bilateral tax treaties which are notified by the party under Article 2 i.e. Covered Tax Agreements ('CTA').

2. Article 2 - Interpretation of Terms

1. Para 1 - Definition of CTAs, Party, Contracting Jurisdiction ('CJ') and Signatory

a) Covered Tax Agreement (CTA)

"CTA" means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):

i) that is in force between two or more:

A) Parties; and/or

B) Jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible and

ii) with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention.

Observations

The para 1(a) of Article 2 defines the CTAs, which means that -

1. a) Bilateral treaties/ DTAA's

- b) Third jurisdictions/ territories to which provisions of the existing DTAA are extended (For Example - Article 29 of the OECD Model Convention which deals with territorial extension. Existing DTAA between France and Sweden later on extended to Algeria).
2. Each above-mentioned party must make a notification to the depository along with list of the agreements to be covered by MLI Convention.
3. India has notified 93 tax treaties in Article 1. India has excluded China from its list of CTAs. Germany, Mauritius, China has excluded India from their list of CTAs.

b) Party

“Party” means:

- i) *A State for which this Convention is in force pursuant to Article 34 (Entry into Force) or*
- ii) *A jurisdiction which has signed this Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval) and for which this Convention is in force pursuant to Article 34 (Entry into Force).*

c) Contracting Jurisdiction (‘CJ’)

“Contracting Jurisdiction” means a party to a Covered Tax Agreement.

d) Signatory

“Signatory” means a State or jurisdiction which has signed this Convention but for which the Convention is not yet in force.

Observations

1. The party refers to states or jurisdictions (i.e. third jurisdictions to which existing DTAA has been extended) which has signed MLI Instrument and such instrument is in force.
2. The contracting Jurisdiction (‘CJ’) refers to the States, jurisdictions or territories that are parties to a Covered Tax Agreement.
3. The Signatory refers to States, jurisdictions or territories that have signed MLI Instrument however same is not yet in force.

2. **Para 2 - Interpretation of Terms -**

2. Para 2 – Para 2 deals with general rules of interpretations

Observations	
1.	General rules of interpretation for terms used in the Convention but not defined therein
2.	If the terms not defined in MLI – Refer CTA i.e. Bilateral Treaties
3.	If the terms not defined in bilateral treaties – Refer domestic tax Laws i.e. Income Tax Act, 1961, GST Laws and Regulations etc.
4.	If the terms not defined in the domestic tax laws – Refer other domestic Laws

3. **Article 3 - Hybrid Mis-matches**

1. Para 1 - *For the purposes of a CTA, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either CJ shall be considered to be income of a resident of a CJ but only to the extent that the income is treated, for purposes of taxation by that CJ, as the income of a resident of that CJ.*

2. Para 2 – *Provisions of a Covered Tax Agreement that require a Contracting Jurisdiction to exempt from income tax or provide a deduction or credit equal to the income tax paid with respect to income derived by a resident of that Contracting Jurisdiction which may be taxed in the other Contracting Jurisdiction according to the provisions of the Covered Tax Agreement shall not apply to the extent that such provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction.*

Para 2 states that provisions of CTA w.r.t. elimination of double taxation shall not be applicable to the extent that such provisions allow taxation by that other CJ solely because the income is also income derived by a resident of that other CJ. This para modifies the application of article on elimination of double tax.

3. Para 3 - CJ's rights shall not be affected by this provisions. The following sentence will be added at the end of paragraph 1: *“In no case shall the provisions of this paragraph be construed to affect a CJ’s right to tax the residents of that CJ.”*

4. Para 4 - Compatibility Clause – Para 1 shall apply in the place of or in the absence of such provisions under the CTAs.

5. Para 5 – Reservations – A party may reserve the right for the application of this article.

6. Para 6 - Notification to the depository – Each party that has not made a reservation under para 5, shall notify to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application). In other cases, para 1 (as it may be modified by para 3) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with para 1 (as it may be modified by para 3).

India's Position - Reservation by India

Observations	
1.	Article 3 deals with the issues relating to pass-through/ flow through entities.
2.	Income derived by transparent entities ('TE') or through a TE or like arrangements will be eligible for treaty benefits only to the extent of such income is taxed in the relevant jurisdiction. The objective of this article is to avoid mis-matches in the tax treatment Opec entities Vs. Transparent entities.
3.	Even income is taxed in the hands of TE's member's/ partners, may trigger treaty eligibility to TEs because of the modification of application of Article on elimination of double taxation.
4.	Indian treaties would not be impacted by Article 3 due to reservation position taken by India.
5.	Article 3 shall apply only if all CJ's has notified same to the depository.
6.	Issue relating to TEs will continue to pose issues/ challenges in the Indian context.

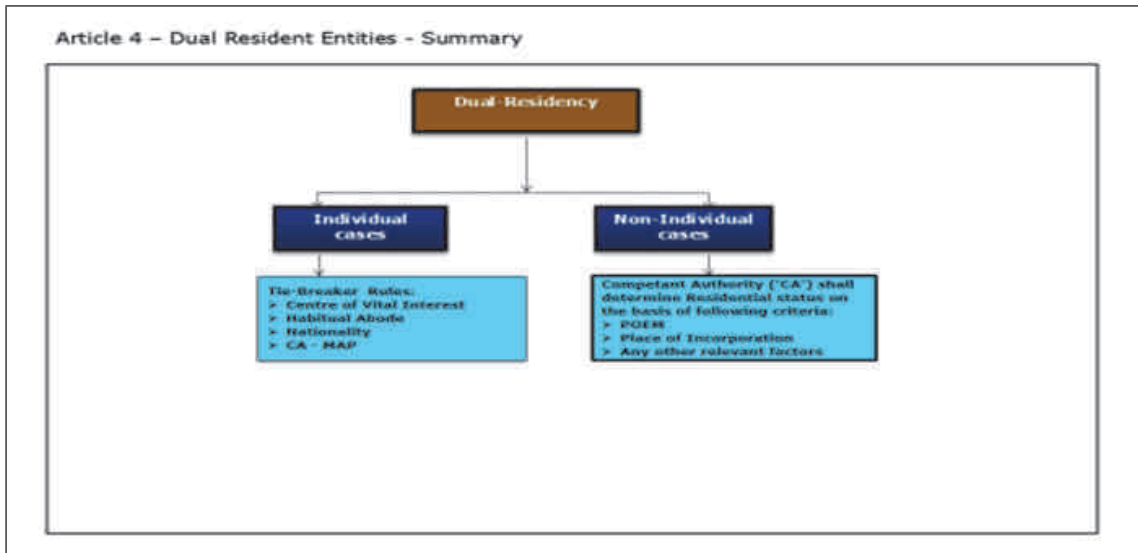
4. Article 4 - Dual Resident Entities

1. Para 1 - *Where by reason of the provisions of a CTA a person other than an individual is a resident of more than one CJ, the CAs of the CJ shall endeavor to determine by MAP the CJ of which such person shall be deemed to be a resident for the purposes of the CTA, having regard to its POEM, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the CTA except to the extent and in such manner as may be agreed upon by the CAs of the CJs.*
2. Para 2 - Compatibility Clause - Para 1 shall apply in the place of or in the absence of such provisions under the CTAs. However, para 1 shall not apply to provisions of a Covered Tax Agreement, which specifically addressing the residence of companies participating in dual-listed company arrangements.
3. Para 3 – Reservations - A party may reserve the right for the application of this article.

4. Para 4 - Notification to the depository – Each party that has not made a reservation under para 3, shall notify to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application). In other cases, para 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with para 1.

India's Position - Opted for application of this article

Observations	
1.	Article 4 provides the way for determining residential status in the case of dual residency of Non-Individual cases.
2.	Presently, most of the DTAA's provides tie-breaker rules for Individual cases. Now, Article 4 provides tie-breaker rule for determining residential status in the case of dual residency of corporate entities.
3.	Presently, most of the treaties use an entity's place of effective management as the key tie-breaker test to determine a dual resident's jurisdiction of tax residence for treaty purposes.
4.	This test will be expanded to include place of effective management (POEM), place of Incorporation and other factors and authorize the two tax administrations to agree on a single jurisdiction of residence.
5.	Please note that Para 1 shall not apply to provisions of a Covered Tax Agreement, which specifically addressing the residence of companies participating in dual-listed company arrangements.
6.	Where a person is a resident of both CJs, then Competent Authorities (CA) shall determine the residential status of such person by mutual agreement considering POEM/ place of Incorporation, any other relevant factors etc.
7.	In the absence of such agreement, no benefit or exemption or relief shall be provided to such person except to the extent agreed by the CAs.
8.	Indian treaties would get impacted by this article. Accordingly, India's DTAA with Japan, Canada, Australia, UK, Israel, South Africa, Ireland and Netherlands etc. would get modified by article 4 since this countries has also opted for this article.
9.	However, there would be no impact India's DTAA with USA, China, Canada, UAE, Belgium, Mauritius, Singapore, Luxembourg, France, Germany and Cyprus etc. Since, this countries either has reservations or they have not included India in their list of CTAs.
10.	Article 4 shall apply only if all CJ's has notified same to the depository.



5. Article 5 - Application of Methods for Elimination of Double Taxation

1. Para 1-6 - Recommends 3 options for elimination of double taxation:

Option A – State of residence would not exempt income from being taxed for the purpose of eliminating double taxation, where the state of source applies the provisions of the CTAs to exempt such income from tax or taxed such income at reduced rate. In such cases, a deduction of taxes paid in the source state shall be allowed in state of residence

Option B – Does not allow application of exemption method with respect to dividends that are deductible in the state of source

Option C – Application of credit method

2. Para 7 - Compatibility Clause – Option C shall apply in the place of such provisions under the CTAs.
3. Para 8-9 – Reservations – A party may reserve the right for the application of this article.
4. Para 10 – Notification to the depository – Each party that shall notify to the depository about their options for the purpose of eliminating double taxation. This article would operate in the asymmetrical manner i.e. option chosen by respective country shall be applicable to their respective residents. For example - where one Party chooses to apply Option A, B, or C to its Covered Tax Agreements, and the other Party chooses a different Option (or chooses not to apply an Option), each Party's choice would apply with respect to its own residents.

India's Position - Opted for Option C and notified following CTAs that contain provision as Option C:

- a. Bulgaria,
- b. Egypt,
- c. Greece,
- d. Slovak Republic

Observations	
1.	Article 5 mainly deals with options for eliminating double taxation. This article provides three options i.e. Option A, Option B and Option C.
2.	Most of the Indian treaties have article on credit method i.e. Option C.
3.	India's DTAA with Bulgaria, Egypt, Greece and Slovak Republic contains exemption method. Accordingly, exemption method will be replaced by Credit method.
4.	Article 5 operate in an asymmetrical manner. Accordingly, this article shall apply to residents of each CJ as per the options exercised by their CJ's.
5.	However, there would be no impact on India's DTAA with USA, China, Canada, Singapore, UAE, UK, France, Belgium, Luxembourg, Germany etc. Since, this countries either has reservations or they have not included India in their list of CTAs.
6.	Article 5 shall apply only if all CJ's has notified same to the depository.

6. Article 6 - Purpose of a Covered Tax Agreement (Minimum Standard)

1. Para 1 - A CTA shall be modified to include the following preamble text-

“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).”

2. Para 2 - Compatibility Clause – Para 1 shall apply in the place/ in the absence of such provisions under the CTAs
3. Para 3 - Optional para - “Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.”
4. Para 4 - Reservations only in the cases where existing language meets minimum standard.

5. Para 5 - Notification to the depository about para 2. Otherwise, preamble text shall be added to the existing one.
6. Para 6 - Notification to the depository about optional 3. Apply only if all other CJ's has notified same to the depository (i.e. Symmetrical Application)

India's Position – Silent

Observations	
1.	The main objective of an Article 6 is to avoid double non-taxation/ treaty shopping/ tax evasion/ tax avoidance.
2.	In the case of Azadi Bachao Andolan case, Supreme Court held that treaty shopping is not illegal unless there is an anti-abuse rule in the Indian tax treaties. Accordingly, it required a specific Limitation on Benefit clause ('LOB') in the tax treaties itself for the purpose of denial of tax treaty benefits/ rights.
3.	This is a minimum standard, accordingly Indian DTAA's would get impacted even though India is silent on this (Refer above-mentioned Para 5).
4.	The intent of the Contracting Jurisdictions is that the Covered Tax Agreement would be interpreted in line with the object and purpose of the Covered Tax Agreement described in the preamble text.
5.	The object and purpose of a specific treaty provision should, in principle, be derived from – <ol style="list-style-type: none"> a) Preamble of the CTA, b) Objective and Purpose of the CTA and c) the text of the provision
6.	India's DTAA with Japan, Australia, Canada, Singapore, UAE, UK, France, Belgium, Luxembourg, and France etc. would get impacted. Accordingly, para 1 of the article 6 shall be added to the preamble text of these CTAs.
7.	However, there would be no impact on India's DTAA with USA, Mauritius, China, and Germany etc. Since USA is not a signatory to MLI and Mauritius, China and Germany has not included India in their list of CTAs.
8.	Optional Para 3 i.e. 'desiring to further develop their economic relationship and to enhance their co-operation in tax matters', would be added to the Indian tax treaties unless other CJ's has reservations.

9. The Indian tax authorities may deny the treaty benefits, in case where grand-fathering exemptions (For example – India’s DTAA with Mauritius and Singapore etc.) is available from the application of GAAR provisions, based on the revised preamble text and PPT test viz. Article 6 and 7 of the MLI instrument.
10. It would be necessary to interpret, evaluate and analyze the wordings of each treaty, its preamble (Original–Pre MLI/Revised–Post MLI) considering the object and purpose of the DTAA while taking treaty benefits.

7. Article 7 - Prevention of Treaty Abuse (Non-Obstacle Article) ('PPT Test') (Minimum Standard)

1. Para 1 - ***Notwithstanding any provisions of a CTA, a benefit under the CTA shall not be granted in respect of an item of income or capital 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, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.***

[There is no definition of 'Benefit' in the MLI Instrument. However, section 102 (10) of The Income Tax Act, 1961 defines the word 'Tax Benefit'.]

2. Para 2 - Compatibility Clause – The para 1 shall apply in the place of/ in the absence of such provisions under the CTAs.
3. Para 3 – If there is no reservations in Para 15, then Optional Para 4 can be adopted.
4. Para 4 – Optional Para – Competent Authorities Test ('CA Test') – The Competent Authorities will determine eligible benefits under the CTAs if the benefits under CTAs are denied to the resident of CJ's upon consideration of all relevant facts and circumstances of the case.
5. Para 5 – Application of Para 4 (CA Test) – It will apply to such provisions under the CTAs.
6. Para 6 – Option to choose Simplified Limitation of Benefits ('SLOB') approach. The details of SLOB approach is contained in Para 8 to para 13.
7. Para 7 – Application of Para 6 (SLOB) - *In cases where some but not all of the Contracting Jurisdictions to a Covered Tax Agreement choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, then, notwithstanding the provisions of that paragraph, the Simplified Limitation on Benefits Provision shall apply with respect to the granting of benefits under the Covered Tax Agreement:*

- a) *by all Contracting Jurisdictions, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depositary accordingly; or*
- b) *only by the Contracting Jurisdictions that choose to apply the Simplified Limitation on Benefits Provision, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depositary accordingly*

The Para 7 deals with the symmetrical and asymmetrical application of SLOB test approach.

Symmetrical application of SLOB and Asymmetrical application of SLOB – Article 7(7):

Particulars	Country A	Country B	Opted for Article 7(7)	Remarks on Applicability - PPT/ SLOB
Symmetrical Application of Article 7	PPT+SLOB	PPT	No	<ul style="list-style-type: none"> Only PPT would be applicable
Asymmetrical Application of Article 7	PPT+SLOB	PPT	Yes	<ul style="list-style-type: none"> Country A will apply PPT+SLOB and Country B will apply PPT only

8. Para 8-13 – SLOB Approach

Particulars	Description
Resident – QP	<ul style="list-style-type: none"> Categories of “qualified person” ('QP') includes individuals, Government, Listed Companies, NGOs etc. However, private limited companies are not included in this.
Resident should be carrying actual trade	<ul style="list-style-type: none"> This is applicable regardless of whether the resident is a qualified person or not. In this case, the resident must be engaged in the active conduct of the business. Income is derived by a person engaged in active conduct of a trade or business in its residence country; and Income derived emanates from or is incidental to that business

Particulars	Description
	<ul style="list-style-type: none"> • For purposes of the Simplified Limitation on Benefits Provision, the term “active conduct of a business” shall not include the following activities or any combination thereof- <ul style="list-style-type: none"> a) Operating as a holding company, b) Providing overall supervision or administration of a group, c) Providing group financing, d) Cash pooling activities, e) Making or managing investments (Except banks/ Insurance companies/ registered securities dealers engaged in the ordinary course of their business)
Derivative Rule	<ul style="list-style-type: none"> • If, on at least half of the days of any twelve-month period ending on the day of granting of benefits under CTA, at least 75% of beneficial interest in the resident is directly or indirectly owned by certain persons entitled to equivalent benefits.
Substantial business activity (PE/ AE/ Connected Persons)	<ul style="list-style-type: none"> • If a resident of a CJ to a CTA derives an item of income from a business activity conducted by that resident in the other CJ, or derives an item of income arising in the other CJ from a connected person, the condition of actual trade of business shall be considered to be satisfied with respect to such item only if – <ul style="list-style-type: none"> a) The business activity carried on by the resident in the first-mentioned CJ to which the item is related is substantial in relation to the same activity or b) A complementary business activity carried on by the resident or such connected person in the other CJ • Activities conducted by connected persons shall be deemed to be conducted by such resident.
Competent Authorities	<ul style="list-style-type: none"> • If a resident of a CJ to a CTA is neither a qualified person pursuant, nor entitled to benefits under paragraph 10 or 11, the competent authority (CA) of the other CJ may, nevertheless, grant the benefits of the Covered Tax Agreement, or benefits with respect to a specific item of income subject to following – <ul style="list-style-type: none"> a) Object and purpose of the Covered Tax Agreement,

<i>Particulars</i>	<i>Description</i>
	b) Demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under the Covered Tax Agreement.

9. Para 14 – Compatibility Clause – The SLOB approach shall apply in the place of/ in the absence of such provisions under the CTAs. 18
10. Para 15 – Reservations – A party can make reservations from the application of Article 7 in the following cases:
 - a. Those who wants to adopt Detailed Limitation of Benefits (‘DLOB’) and Conduit Financing Structures (‘CFS’) Rules/ PPT Test
 - b. PPT & CA test already existed in CTAs
 - c. SLOB already existed in CTAs
11. Para 16 - Only PPT test would be applicable unless all CJ’s has agreed on SLOB.
12. Para 17 – Notification to the depository – Notification to the depository about para 1 or para 4. The provisions of this article shall apply only if all other CJ’s has notified same to the depository (i.e. Symmetrical Application). A party may include a statement that such Party accepts the application of paragraph 1 alone as an interim measure, it intends where possible to adopt a limitation on benefits provision, in addition to or in replacement of paragraph 1, through bilateral negotiation.

India's Position: PPT + SLOB

India has accepted the application of Article 7(1) i.e. PPT as an interim measure along with SLOB and it intends where possible to adopt a limitation on benefits provision, in addition to or in replacement of Article 7(1), through bilateral negotiation

Impact of Article 7 on India-Singapore/ Mauritius tax treaty – GAAR/ PPT/ LOB:

<i>Particulars</i>	<i>DTAA Between</i>	<i>Grandfathering Exemptions Available From GAAR</i>	<i>LOB Applicability as per Treaty</i>	<i>Remarks on Applicability - GAAR/ PPT/ LOB</i>
Shares sold in April 2020 (Were purchased on Jan 2017)	India and Mauritius/ Singapore	Yes	No	NA

Particulars	DTAA Between	Grandfathering Exemptions Available From GAAR	LOB Applicability as per Treaty	Remarks on Applicability - GAAR/ PPT/ LOB
Shares sold in April 2020 (Were purchased on April 2017)	India and Singapore	No	Yes	PPT+ GAAR+LOB
Bonus/ Normal Shares sold in April 2020 (Acquired in reconstruction/ Converted Instruments/Based on original shares of Dec-16)	India and Mauritius/ Singapore	Yes	No	NA
Shares sold in April 2020 (Acquired on or after 1st April 2017)	India and Mauritius	No	Yes	GAAR+LOB
Shares sold in April 2020 (Acquired in reconstruction in Dec 2019)	India and Singapore	No	Yes	PPT+GAAR+ LOB

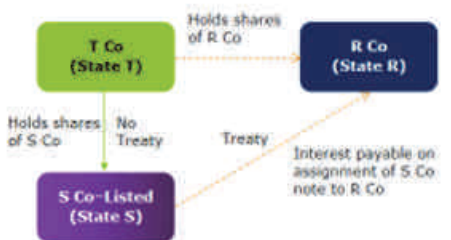
Observations

1. Article 7 deals with the Principle Purpose Test ('PPT') i.e. transaction must have commercial justification, other than serving purpose of obtaining benefits. Mere tax advantage cannot be the main business purpose.
2. Provisions of the GAAR would get triggered, if the main purpose is to obtain tax benefits. However, the provisions of the PPT test would get triggered, even if the obtaining that benefit is one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit i.e. in PPT test, obtaining the benefits need not be the sole or dominant purpose of an arrangement or transaction.
3. The term 'benefit' in the context of the PPT is very wide in nature, so that it could, for example, consist of a tax reduction, exemption, deferral or refund that is obtained through the application of the relevant tax treaty. The MLI's use of the phrases 'that

resulted directly or indirectly in that benefit' and 'any arrangement or transaction', also appear to widen rather than narrow the potential application of the PPT test.

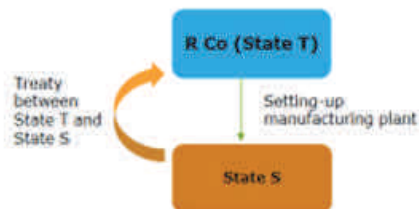
4. As per Section 102(10) of the Act, Tax Benefit includes– A reduction or avoidance or deferral of tax / amount payable under the Act; or an increase in refund of tax / other amount under the Act; or a reduction or avoidance / deferral of tax / other amount that would be payable under the Act, as a result of tax treaty; or an increase in refund of tax / other amount that would be payable under the Act as a result of tax treaty or a reduction in total income or an increase in loss, in the relevant/ any other previous year.
5. To determine whether obtaining a treaty benefit was one of the principal purposes of an arrangement or transaction, an objective analysis should be conducted of the aims and objectives of all persons involved, considering all relevant circumstances.
6. Persons to whom a treaty benefit could be denied as a result of the application of the PPT still may be able to obtain the treaty benefit if they can establish that obtaining that benefit would be in line with the object and purpose of the relevant provision, given the facts and circumstances.
7. The object and purpose of a specific treaty provision should, in principle, be derived from - Preamble of the CTA, Objective and Purpose of the CTA and the text of the provision.
8. Article 7 talks about Detailed Limitation of Benefits ('DLOB'). However, as such no details available in MLI Instrument about DLOB.
9. Now onwards, taxpayers needs to satisfy - PPT+LOB+GAAR+SLOB, depending upon the option chosen selected by the parties.
10. List of Countries Chosen PPT test only - Japan, France. India's DTAA with this countries would be impacted and accordingly, PPT test would be applicable in respect of India's DTAA with these countries.
11. List of Countries Chosen PPT test + CA test - UAE, Australia, Belgium, Singapore, Luxembourg, Netherlands, UK, Cyprus, Ireland. In this case, only PPT test would be applicable in India's case.
12. List of countries Chosen both PPT test +SLOB test – Canada. In this case, both PPT and SLOB shall be applicable in respect of India-Canada DTAA.
13. No impact on India's DTAA with Mauritius, USA, China and Germany etc.

Article 7 – Prevention of Treaty Abuse - Practical Case Studies



- > T Co hold the shares of S Co and R Co and lends \$1 mn to S Co in exchange for a note (Interest at 7%p.a).
- > No Treaty between State T and State S and, hence, any interest paid by S Co to T Co is subject to a withholding tax
- > Under the State R-State S tax treaty, there is an exemption on source country interest withholding tax
- > T Co decides to assign the S Co note to R Co in exchange for another note from R Co.

In the absence of other facts and circumstances, reasonable to conclude that one of the primary purposes of assigning the note was to enjoy a lower/ nil WHT and hence, granting of treaty benefit would be inappropriate.



- > R Co, in business of producing electronic devices is expanding rapidly to establish a plant in a developing country to benefit from lower manufacturing costs
- > Preliminary review - 3 locations shortlisted with similar economic & political environment
- > State S is the only country with which State T has a treaty convention
- > Decision taken to build plant in State S

> In this example, whilst the decision to invest in State S is based on tax considerations, the principal purpose of investment is expansion of business.

- > In this case, PPT is satisfied:
 - Intention is to expand business activities
 - Objective of treaty to promote Cross-Border Investment

8. Article 8 – Dividend Transfer Transactions

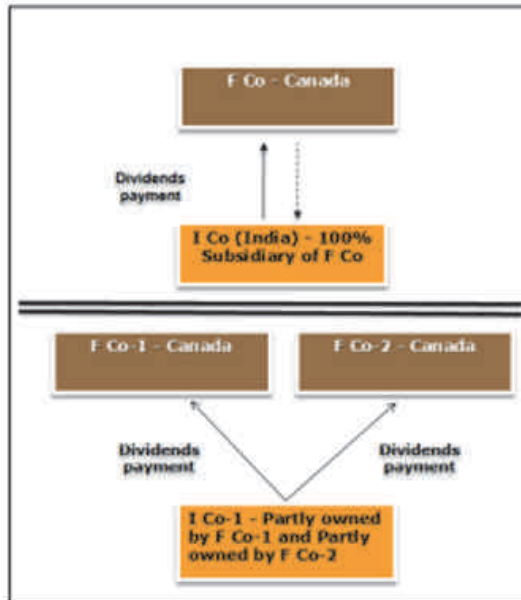
1. Para 1 - Provisions of a CTA that exempt dividends paid by a company which is a resident of a CJ from tax or that limit the rate at which such dividends may be taxed, provided that the beneficial owner or the recipient is a company which is a resident of the other CJ and which owns, holds or controls more than a certain amount of the capital, shares, stock, voting power, voting rights or similar ownership interests of the company paying the dividends, shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividends).
2. Para 2 - Compatibility Clause – Para 1 shall apply in the place of/ in the absence of such provisions under the CTAs.
3. Para 3 – Reservations – A party may make reservations for application of this article.

4. Para 4 - Notification to the depository - Each party that has not made a reservation under para 3, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application)

India's Position - Opted except Portugal

Observations	
1.	Article 8 states that in order to eligible for Nil/ reduced rate of with-holding for dividend taxability, recipient must satisfy conditions of beneficial ownership i.e. beneficially holds/ owns more than certain amount of share/ capital/ rights/ voting power or similar ownership rights etc. And such holding must be met throughout 365 days of period which includes the date of payment of the dividends.
2.	It is targeted to curb dividend stripping practices and related strategies.
3.	However, for purpose of computing such 365 days period, the ownership of changes on account of corporate reorganization shall not be considered.
4.	With respect to 365 days – there is no clarification with respect computing such period whether to look forward/ backward from the date of dividend payment.
5.	There are various practical difficulties in tracking 365 days.
6.	Article 7 i.e. PPT test shall over-ride this article since article 7 is non-Obstance article covered under CTAs, which over-rides all the provisions of the CTAs. Accordingly, among other conditions, PPT test must be satisfied in order to claim the treaty benefits.
7.	<u>Please note that provisions of article 8 shall be applicable only to notified CTAs covered under this Article-8.</u>
8.	Tracking of 365 days shall be mandatory in order to claim treaty benefits covered under CTAs.
9.	No impact on India's DTAA with Japan, UAE, Australia, Belgium, Mauritius, Singapore, Ireland, UK, France, USA, China and Germany etc.
10.	Portugal excluded since it contains threshold of more than 365 days.
11.	India's DTAA with Canada would get impacted by this Article 8.

Article 8 – Dividend Transfer Transactions - Practical Case Study



- > In the first case, F Co (Canada) holding 100% shares of I Co.
- > In the second case, the 50% shares transferred to Foreign company under the scheme of reconstructions/ re-organization.
- > In this case, both the conditions i.e. holding for throughout 365 days and minimum holding % would be considered as satisfied since its resulting out of Corporate reorganisation, reconstruction, Division, Merger etc.
- > Accordingly, conditions specified in Article 8 of MLI are satisfied. Therefore, benefit of reduced withholding can be taken in this case and can make payment to F Co-1 and F Co-2 (Canada) after withholding taxes at beneficial rates.

9. Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property (Real Property)

1. Para 1 - Provisions of a CTA providing that gains derived by a resident of a CJ from the alienation of shares or other rights of participation in an entity may be taxed in the other CJ provided that these shares or rights derived more than a certain part of their value from immovable property situated in that other CJ (or provided) that more than a certain part of the property of the entity consists of such immovable property (real property).
2. Para 2 - Compatibility Clause (For Para 1) – The para 1 shall apply in the place of / in the absence of such provisions under the CTAs.
3. Para 3 – Provides Optional Para 4
4. Para 4 - Optional Para - *For purposes of a CTA, gains derived by a resident of a CJ from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other CJ if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property situated in that other CJ.*
5. Para 5 - Compatibility Clause (For Para 4) - The para 4 shall apply in the place of / in the absence of such provisions under the CTAs.

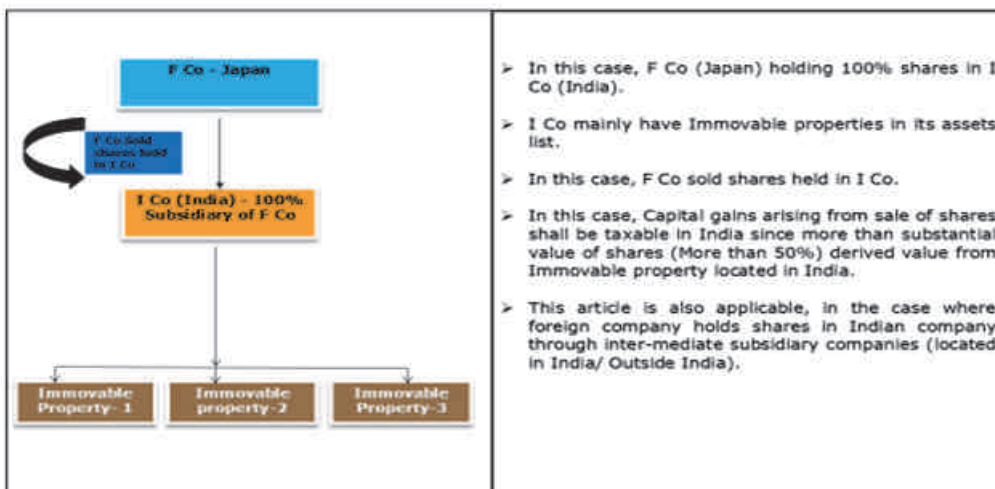
6. Para 6 – Reservations – A party may make reservations for application of this article.
7. Para 7 & 8 - Notification to the depository - Each party that has not made a reservation under para 6, shall notify same to the depository about para 1 or para 4. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application). Where CJ has opted for Para 1 and 4, then Para 4 shall be applicable.

India's Position - Opted Optional Para 4. W.r.t. Certain countries-Para 1 shall be applicable

Observations

1. Generally, capital gains arising from sale of shares is taxable in the residence state. However, capital gains arising from sale of shares which derives value (more than certain amount or 50%) from the immovable property located in the other CJ, then such gain shall be taxable in the other CJ, where such immovable property is located.
2. The relevant threshold of value more than certain amount or 50% should be met 365 days preceding such date of alienation of shares.
3. As per UN Model Convention, this article is not applicable to the companies which are using their immovable properties in its business activities (For example – A company engaged in the developing, operating and maintaining an Industrial park and related activities. However, this can't be applied to any CTAs straight away. However, it is applicable in the case of companies engaged in the business of managing immovable properties. The wordings and text of the each DTAA needs to be interpret and analyze carefully. [AP (HC) - DIT (IT) Vs. Venenberg Facilities BV]
4. Article 9 is applicable to shares or similar interests and not to Bonds/ debentures/ debt instruments. The applicability of Article 9 w.r.t sale of converted instruments viz. conversion of Bonds/ CCDs into shares is unclear.
5. List of Countries Opted-Para 1: Australia, Belgium, Netherlands. Accordingly, Para 1 shall be applicable in respect of India DTAA's with these countries.
6. List of Countries Opted-Para 4: Japan, Canada, France, New Zealand, Israel, Ireland. Accordingly, Para 4 shall be applicable in respect of India DTAA's with these countries.
7. Reservations & other cases: UAE, Mauritius, Singapore, Luxembourg, UK, UAE, USA/ China and Germany etc. Hence, no impact on India's DTAA's with these countries.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Practical Case Study



10. Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

1. Para 1 - Where: a) an enterprise of a CJ to a CTA derives income from the other CJ and the first-mentioned CJ treats such income as attributable to a PE of the enterprise situated in a third jurisdiction; and b) the profits attributable to that PE are exempt from tax in the first mentioned CJ, the benefits of the CTA shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned CJ on that item of income if that PE were situated in the first mentioned CJ. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other CJ, notwithstanding any other provisions of the CTA.
2. Para 2 - Para 1 shall not be applicable in the case of ACOB (Actual conduct of Business).
3. Para 3 - Apply to Competent Authorities (CAs) in the case of denial of benefits.
4. Para 4 - Compatibility Clause – Para 1 shall apply in the place of/ in the absence of such provisions under the CTAs.

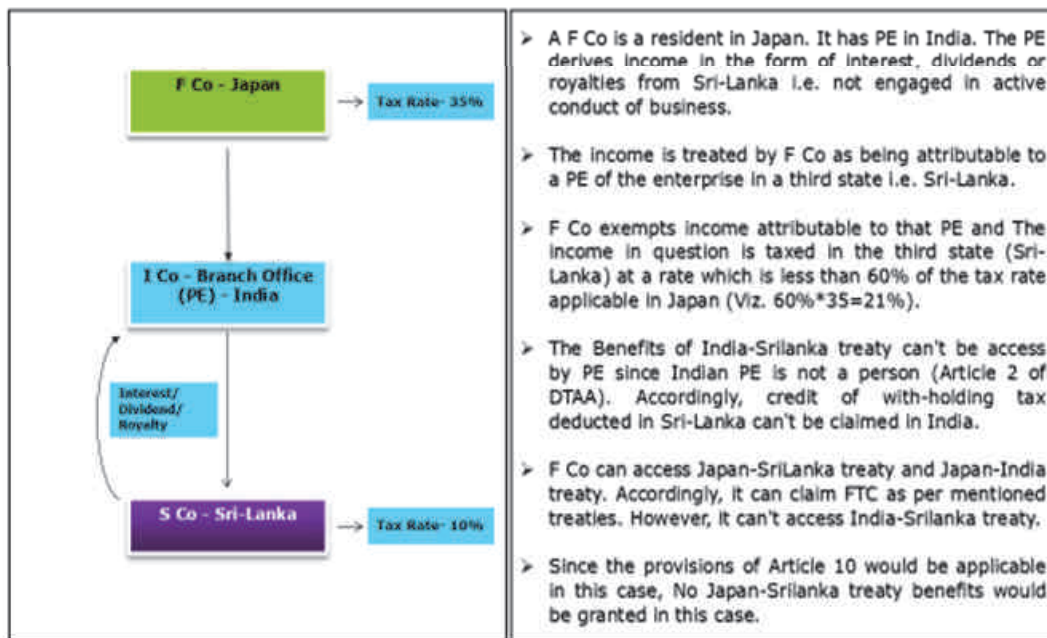
5. Para 5 - Reservations – A party can make reservations for application of this article.
6. Para 6 - Notification to the depository - Each party that has not made a reservation under para 5, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's Position – Silent

Observations

1. An enterprise earning income through PE situated in 3rd country and such income is exempt in the country of residence, then no benefits covered under the CTAs in respect of such income derived by 3rd country PE shall be provided, if tax rate is less than 60% of applicable tax rate in the residence country. In such cases, the provisions of domestic laws shall be applicable and no tax treaty benefits shall be given.
2. India's position is silent on this article. Accordingly, it would be applicable to Indian treaties unless other countries has reservations/ has not opted for this article.
3. This article shall not be applicable in case the income is derived by a person engaged in active conduct of a trade or business.
4. The term "active conduct of a business" shall not include the following activities - making or managing or holding of investments, unless these activities are carried out by banking companies, insurance companies and registered securities dealers etc.
5. The provisions of the Article 10 would be applicable to India's DTAA with Japan, Israel and Netherlands etc. Accordingly, the India DTAA's with these countries would get modified to the extent of para 1 of the Article 10 of the MLI Instrument.
6. The provisions of the Article 10 would not be applicable to India's DTAA with UAE, Australia, Belgium, Mauritius, Singapore, Ireland, UK, France, USA, China, Cyprus, Luxembourg, Sweden, Canada and Germany etc.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Practical Case Study



11. Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents

1. Para 1 – A CTA shall not affect the rights of a country of residence to tax its own residents. However it subject to certain exceptions such as provisions with respect to Corresponding adjustment, Foreign Tax Credit ('FTC'), Mutual Agreement Procedure (MAP), Pension and similar payments etc.
2. Para 2 - Compatibility Clause – The para 1 shall apply in the place of/ in the absence of such provisions under the CTAs.
3. Para 3 - Reservations – A party may make reservations for the application of this article.
4. Para 4 - Notification to the depository - Each party that has not made a reservation under para 3, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's Position - Silent

Observations	
1.	This article provides a 'saving clause', which preserves the right of CJ to tax its own residents.
2.	India's position is silent on this article. Accordingly, it will be applicable to Indian treaties unless other countries have reservations/ not opted for this article.
3.	This article mainly protects the rights of residence country to tax its own residents subject to certain exceptions.
4.	There are various exceptions (provisions of the CTAs) given in this article viz. Provisions of the CTAs which deal with the Corresponding adjustment, Foreign Tax Credit ('FTC') – Credit/ Exemption method, Mutual Agreement Procedure ('MAP'), Pension and similar payments, government employees, student/ trainee, researcher, Non-discrimination, members of the diplomatic mission, social security payments and other payments, fiscally transparent entities/ pass-through entities etc.
5.	A party that adopts the provision on transparent entities contained in Article 3(1) would also adopt a provision ensuring that its application will not interfere with the taxation by a Contracting Jurisdiction of its residents, such as the saving clause provided under this article.
6.	The provisions of this article would be applicable to India's DTAA with Australia, Belgium and UK etc.
7.	The provisions of this article would be applicable to India's DTAA with UAE, Mauritius, Singapore, Ireland, France, USA, China, Germany, Japan, Canada and Netherlands etc.

12. Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies

1. Para 1 - *Notwithstanding the provisions of a CTA that define the term "PE", but subject to Para 2, where a person is acting in a CJ to a CTA on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:*
 - a) *In the name of the enterprise; or*
 - b) *For the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or*
 - c) *For the provision of services by that enterprise*

that enterprise shall be deemed to have a PE in that CJ in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that CJ, would not cause that fixed place of business to be deemed to constitute a PE under the definition of PE included in the CTA (as it may be modified by this Convention).

[Currently, OECD model covers habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise.]

2. *Para 2 - Para 1 shall not be applicable where the person acting in a CJ to a CTA on behalf of an enterprise of the other CJ carries on business in the first mentioned CJ as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.*

[Currently, OECD model covers Independent agent acting in the ordinary course of business.]

3. Para 3 - Compatibility Clause – Para 1 and 2 shall apply in the place of such provisions under the CTAs.
4. Para 4 – Reservations – A party can make reservations for application of this article.
5. Para 5 & 6 - Notification to the depository - Each party that has not made a reservation under para 4, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

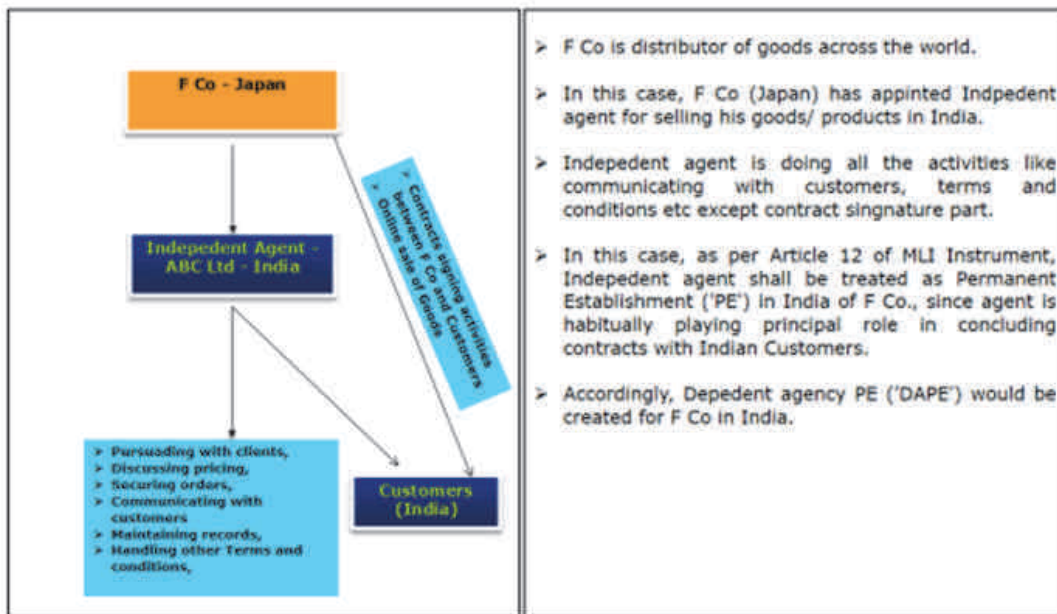
India's Position - Opted for both the Para i.e. Para 1 and 3

Observations	
1.	This article deals with agency PE and independent agent rules. It is targeted to curb the commissionaire arrangements and similar strategies, which currently many MNEs are using for avoiding agency PE status.
2.	The agency PE ('DAPE') rule is extended to cover persons who habitually plays a principal role leading to conclusion of contracts that are routinely concluded without material changes. Such changes has already been made in the Income Tax Act, 1961 ('Act') by changing the definition of business connection under section 9(1)(i) of the Act.
3.	The Principal role leading to conclusion of contract includes cases where a person solicits and receives (but does not formally finalise) orders. It does not cover cases

wherein a person merely markets goods / services without being actively involved in conclusion of the contract.

4. In pre-MLI scenario, no DAPE gets created in India if its agent does not have authority to conclude contracts. However, post MLI, DAPE would get triggered, since DAPE is expanded to cover persons who habitually plays a principal role leading to conclusion of contracts that are routinely concluded without material changes. This article affect transactions in case where non-resident has appointed authorised representative in India for managing their Indian business operations. It would affect all the marketing companies, all the companies doing supporting activities etc.
5. The scope of an independent agent is also restricted and accordingly, person who is exclusively or almost exclusively acting for closely related parties, then such person shall not be treated as an independent agent.
6. India has notified most of the tax treaties under article 12. This article shall apply only when all CJ's has made notification on this article.
7. The definition of closely related enterprise is given in article 15 of the MLI. This includes cases where (a) a person possesses directly or indirectly more than 50 percent of the beneficial interest in the other person or (b) where another person possesses directly or indirectly more than 50 percent beneficial interest in the person and the enterprise.
8. Considering the above changes, it is imperative for MNEs to revisit and review their existing business models and contractual arrangements. Specifically, MNEs would have to ensure that actual conduct of agents/group entities/employees/consultants in India correspond to the terms of contract entered into. Also, it would now be crucial for MNEs to maintain adequate documentary evidence (in form of correspondences, email communications, minutes of meetings with customers, employees social media and job profiles/ descriptions, designation, appraisal letters etc.) to substantiate the role of their agents/employees/subsidiaries in India to safeguard their interests during litigation. Just by mentioning that the contract is entered into on principal-to-principal basis will not suffice.
9. This article covers only agents having authority to conclude contracts. Other than this, activities like securing orders/ communicating with customers/ maintaining stock etc are remain unaffected.
10. India's DTAA's with Japan, Belgium and France would get impacted by this article. There would be no impact on India's DTAA's with USA, China, UAE, UK, Australia, Canada, Mauritius, Singapore, Ireland, Luxembourg, Cyprus, Germany and Netherlands etc.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies - Practical Case Study



13. Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

1. Para 1 - Option to choose - Option A/ Option B
2. Para 2 - *Notwithstanding the provisions of a CTA that define the term "PE", the term "PE" shall be deemed not to include: 26*

- a. *the activities specifically listed in the CTA (prior to modification by MLI) as activities deemed not to constitute a PE, whether or not that exception from PE status is contingent on the activity being of a preparatory or auxiliary character ('P&A');*
- b. *the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in sub-para (a);*
- c. *the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paras (a) and (b),*

Provided that such activity or, in the case of sub-para c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

3. Para 3 - Similar to para 1 - Specific activity based exemptions – Automatic exemptions irrespective of whether such activity is in the nature of P&A character.

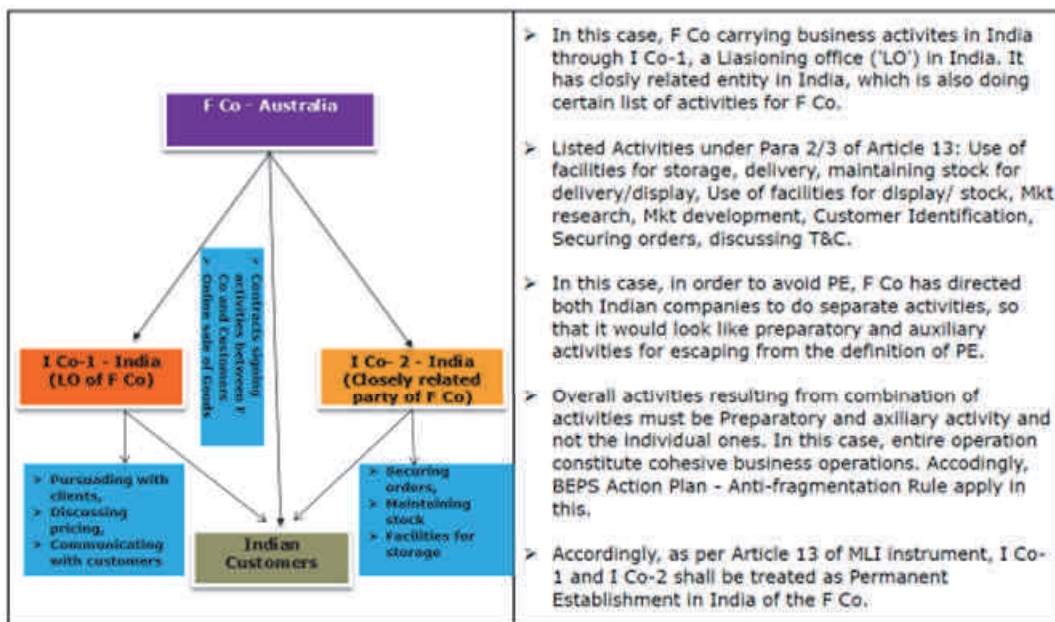
4. Para 4 - A provision of a CTA (as it may be modified by para 2 or 3) that lists specific activities deemed not to constitute a PE shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise ('CRE') carries on business activities at the same place or at another place in the same CJ and
- that place or other place constitutes a PE for the enterprise or the CRE under the provisions of a CTA defining a PE; or 30
 - the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or CRE at the two places, is not of a P&A,
- Provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or CRE at the two places, constitute complementary functions that are part of a cohesive business operation.
5. Para 5 - Compatibility Clause – Para 2/3 and 4 shall apply in the place of such provisions under the CTAs.
6. Para 6 – Reservations – A party may make reservations for application of this article.
7. Para 7 & 8 - Notification to the depository - Each party that has not made a reservation under para 4, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's Position - Chosen Option A and Silent on Para 4

Observations	
1.	This article deals with avoidance of PE through the specific activity exemptions. This article is targeted to curb anti-fragmentation practices adopted by the MNEs for avoiding PE status.
2.	In pre-MLI scenario, in case of an independent activities carried out through subsidiary company there was no PE risk, since the same was covered under specific exemption list or overall activities considered to be of P&A.
3.	Post MLI, an enterprise cannot fragment a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatory or auxiliary activity. Overall activities needs to be checked.
4.	Option A deals with listed activities shall not deemed to be PE subject to condition that overall result from such activities should be preparatory/ auxiliary in nature. India has notified most of tax treaties under this Article.

5. Option B deals with specific activity exemption i.e. Irrespective of preparatory/ auxiliary, there will be an automatic exemption to the listed activities.
6. Para 4 states that PE exception activities shall not apply to connected person's Business activities if their activities constitute complementary functions which are forming part of Cohesive business operations.
7. Indian treaties would get impacted only if all CJ has opted for Option A.
8. List of the Countries - Chosen Option A - Japan, Australia, Netherlands etc. Accordingly, India's DTAA's with these countries would get impacted.
9. List of the Countries – Chosen Option B - Belgium, Singapore, Ireland, Luxembourg, France etc. Accordingly, there would be no impact on India's DTAA's with these countries since India has selected Option A.
10. India's position is silent on Para 4. Accordingly, the same would get added in Indian treaties if other CJ has not made any reservations.
11. Para 4 will added India's DTAA's with - Japan, Australia, Belgium etc.
12. Reservations and other cases - UK, USA, UAE, Cyprus, China, Canada, Mauritius, Germany. No impact India's DTAA's with these countries.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemption - Practical Case Study



14. Article 14 – Splitting-up of Contracts

1. Para 1 – *For the sole purpose of determining whether the period (or periods) referred to in a provision of a CTA that stipulates a period (or periods) of time after which specific projects or activities shall constitute a PE has been exceeded:*
 - a) *where an enterprise of a CJ carries on activities in the other CJ at a place that constitutes a building site, construction project, installation project or other specific project identified in the relevant provision of the CJ, or carries on supervisory or consultancy activities in connection with such a place, in the case of a provision of a CTA that refers to such activities, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period or periods referred to in the relevant provision of the CTA; and*
 - b) *where connected activities are carried on in that other CJ at (or, where the relevant provision of the CTA applies to supervisory or consultancy activities, in connection with) the same building site, construction or installation project, or other place identified in the relevant provision of the CTA during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,*

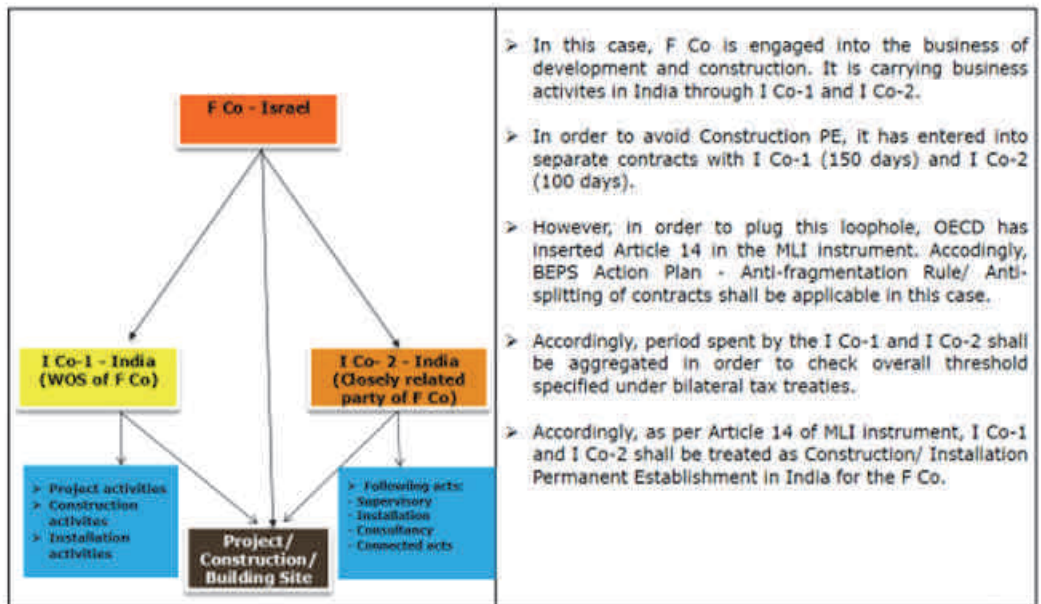
these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement.
2. Para 2 - Compatibility Clause – The para 1 shall apply in the place of/ in the absence of such provisions under the CTAs. 32
3. Para 3 – Reservations – A party can make reservations for application of this article.
4. Para 4 - Notification to the depository - Each party that has not made a reservation under para 3, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's Position – Silent

Observations	
1.	This article deals with splitting of contracts. It is targeted to curb the practice of avoidance of PE through splitting of contracts.
2.	Presently, as per UN model convention and OECD model convention, the threshold time limit for determining construction/ installation PE is 6 months and 12 months respectively.

3. It was found that many enterprises were able to abuse the exemption provided under this provision by splitting their projects. While the BEPS Action Plan 7 noted that such abuse may be addressed through the PPT rules recommended under Action Plan 6, it still provided for a measure that could be applicable to those treaties that do not include the PPT or as an alternative provision for those countries looking to specifically address the issue.
4. In the pre-MLI scenario, turnkey / EPC contracts are typically divided amongst group entities in overseas jurisdiction, such that presence of none of the foreign entity in India exceeds the prescribed threshold for determination of Construction / Installation PE under the tax treaties. Since such threshold time limit was applicable to each independent contracts/ projects separately.
5. However, post-MLI, while determining the construction PE/ installation PE, the practice of splitting of contracts shall be disregarded and duration of each activity performed by MNEs and its closely related enterprises would get clubbed together.
6. For purpose of calculating threshold under CTA (For determining Installation/ Construction PE etc.) - Following period shall be aggregated -
 - a) Enterprise carries activities at a building site, construction, installation project or specified supervisory/ consultancy activities in connection with such places and such activities exceeds for 30 days and
 - b) Connected activities at the same above-mentioned places by closely related enterprises exceeds for 30 days
7. India's position is silent on this article. Accordingly, it would be applicable to Indian tax treaties unless other contracting jurisdiction has reservations/ not opted for this article.
8. The provisions of this article would have an impact works contracts, turnkey contracts/ projects, formation of service PE in India.
9. The provisions of this article would be applicable to India's DTAA with Australia, Ireland, Israel and Netherlands etc.
10. The provisions of this article would not be applicable to India's DTAA with Cyprus, UAE, Japan, Belgium, Canada, Mauritius, Singapore, Ireland, France, USA, China, Luxembourg, UK and Germany etc.

Article 14 – Splitting-up of Contracts- Practical Case Study



15. Article 15 – Definition of a Person Closely Related to an Enterprise

1. Para 1- Enterprises shall be treated as closely related enterprise ('CRE') if it directly/ indirectly holds more than 50% of the beneficial interest in another person/ enterprise. This article is applicable in respect of Article 12, 13 and 14 of the MLI Instrument.
2. Para 2 - Not apply to above-mentioned Articles if a party has made the reservations in article 12/ 13 or 14 of the MLI Instrument.

India's Position - Silent

Observations

1. This article deals with definitional provisions of the CRE.
2. A party is only permitted to have a reservation for Article 15 if such Party has also reservation in articles 12(1), 13(4) and 14(1) of the MLI instrument.
3. India's position is silent on this article. Accordingly, it would be applicable to Indian treaties unless other CJ has reservations/ not opted for this article.
4. This includes cases where (a) a person possesses directly or indirectly more than 50% of the beneficial interest in the other person or (b) where another person possesses directly or indirectly more than 50% beneficial interest in the person and the enterprise.

5. The provisions of this article would be applicable to India's DTAA with Japan, Australia, Belgium, Ireland, UK and France etc.
6. However, the provisions of this article would not be applicable to India's DTAA with UAE, Canada, Mauritius, Singapore, USA, China, Luxembourg and Germany etc.

16. Article 16 – Mutual Agreement Procedure

1. Para 1:

- a. First sentence – Where taxation not in accordance with the provisions of CTA, then irrespective of remedies under domestic act, present the case to the CA of CJ's.
- b. Second Sentence – Case must be presented with 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the CTAs.

2. Para 2:

- a. First Sentence - CAs shall endeavor - to arrive at satisfactory solution
- b. Second Sentence - Final solution shall be implemented irrespective of any time limits under domestic laws

3. Para 3:

- a. 1st Sentence - CAs shall endeavor - to arrive at satisfactory solution
- b. 2nd Sentence - CAs shall consult together to avoid double taxation

4. Para 4 - Compatibility clause – Para 1, 2 and 3 shall apply in the place of or in the absence of such provisions under the CTAs.

5. Para 5 – Reservations – A party may make reservations for application of this article.

6. Para 6 - Notifications to the depository - Each party that has not made a reservation under para 5, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's position – Reservation on first sentence of Para 16(1) and Opted for bilateral negotiation process

Observations

1. Article 16 deals with mutual agreement procedure ('MAP') i.e. Best practices for improving dispute resolution and the procedural requirements for MAP implementations.

2. It is important to note that the entirety of Article 16 is not a minimum standard and Parties are permitted to make reservations against specific provisions pursuant to conditions.
3. India has made a specific reservation against the first sentence of Article 16(1) on the basis that it intends to meet the minimum standard required for improving dispute resolution under the OECD/G20 BEPS Package.
4. However, India does not have a reservation against the second sentence of Article 16(1) and that the provision is applicable in the in place of or in the absence of the relevant provision, all of India's CTA should be modified to the extent that the relevant treaty party has not made a reservation with respect to the same.
5. India's DTAA with UAE, Australia, Belgium, Canada, UK and Germany etc would get impacted by provisions of this article.
6. No impact on India's DTAA with Japan, Mauritius, Singapore, Ireland, Luxembourg, France, USA and China etc. Since these countries has made reservations on article 16.

17. Article 17 – Corresponding Adjustments (Minimum Standard)

1. Para 1 - *Where a CJ includes in the profits of an enterprise of that CJ on - and taxes accordingly- profits on which an enterprise of the other CJ has been charged to tax in that other CJ and the profits so included are profits which would have accrued to the enterprise of the first-mentioned CJ if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other CJ shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the CTA and the CA of the CJs shall if necessary consult each other.*
2. Para 2 - Compatibility Clause – The para 1 shall apply in the place of/ in the absence of such provisions under the CTAs.
3. Para 3 – Reservations – A party may make reservations for application of this article.
4. Para 4 - Notifications to the depository - Each party that has not made a reservation under para 3, shall notify same to the depository. Such provisions shall apply only when all CJ's has made notification on this article (i.e. Symmetrical Application).

India's Position – Opted for this article. However, India has made reservation to exclude those CTAs that already contain a similar provision

Observations

1. This article deals with the provisions of Corresponding adjustments which has resulted out of transfer pricing adjustments applicable in the case of transactions entered into between associated enterprises.
2. This article provides for corresponding adjustments with respect to transfer pricing adjustments made in the income of an enterprise should be made in the income of an enterprise which is located in other CJ.
3. The above-mentioned transfer pricing adjustments may give rise to economic double taxation, insofar as an enterprise in a contracting state whose profits are revised upwards will be liable to tax on an amount of profit which has already been taxed in the hands of its associated enterprise in the other contracting state.
4. Article 9(2) of the OECD Model Convention provides that the other contracting state shall make an appropriate adjustment to relieve such double taxation.
5. An Article 17 is a best practice, BEPS action plan required that as a minimum standard, countries should provide access to the mutual agreement procedure in transfer pricing cases and implement the resulting mutual agreements regardless of whether the relevant bilateral tax treaty contains a provision modelled after Article 9(2) of the OECD Model Tax Convention.
6. The objective of this article is to avoid economic double taxation.
7. The provisions of this article would be applicable to India's DTAA with Japan, UAE, Belgium and France etc.
8. However, the provisions of this article would not be applicable to India's DTAA with Mauritius, Singapore, Australia, Canada, Ireland, Luxembourg, UK, Germany and Netherlands etc. Since, India has made reservations on these DTAAs because it already contains similar article.

18-26. Article 18 – 26 - Arbitration

- a) Article 18 - Choice to Apply Part VI
- b) Article 19 - Mandatory Binding Arbitration
- c) Article 20 – Appointment of Arbitrators
- d) Article 21 – Confidentiality of Arbitration Proceedings

- e) Article 22 - Resolution of a Case Prior to the Conclusion of the Arbitration
- f) Article 23 - Type of Arbitration Process
- g) Article 24 - Agreement on a Different Resolution
- h) Article 25 - Costs of Arbitration Proceedings
- i) Article 26 – Compatibility

Observations

1. These are optional provisions of MLI instrument.
2. This basically covers when matter should be put before arbitration, process of appointment of arbitrators, and its costs, how decision of arbitration proceedings shall be implemented and other related matters.
3. The MLI aims to manage dispute resolution, of which one avenue is to give taxpayers access to MAP and the option to go for mandatory arbitration.
4. MLI only applies if both parties choose to adopt mandatory arbitration. A taxpayer may trigger mandatory arbitration when the CAs are not able to reach an agreement to resolve a case within a period of two to three years.
5. No impact on the Indian treaties, since India has not opted for this article.
6. Mandatory arbitration is a mechanism that obliges both parties to the treaty to submit unresolved issues in a MAP case to an arbitration panel, to resolve within a stipulated period of time.
7. Article 19 of the MLI provides for mandatory binding arbitration in the event that Competent Authorities are unable to reach a decision under MAP within two years, India has not accepted such provision taking a position that such binding arbitration would adversely impact its sovereignty.
8. Those countries that have opted for mandatory arbitration, can make a reservation to substitute the 2 year period with a 3 year period in all their tax treaties. If a country does not make a specific reservation with respect to the scope of the cases eligible for arbitration, all treaty-related disputes that could not be resolved through MAP could be subject to arbitration.
9. The CA of the respective countries that have incorporated mandatory arbitration in their tax treaties are to mutually agree on the different rules. They may be on the appointment of arbitrators. One of the default rules relates to the arbitration panel, which is to comprise three independent individual members: one member is to be appointed by each CA and the two members then appoint a third member who is not a national or resident of either country to serve as the chairperson.

10. Accordingly, the fact that no timeline has been provided for how long Competent Authorities may take to resolve a MAP dispute, coupled with the fact that India's CTA's will not contain an arbitration clause poses an additional burden on the taxpayers and is likely to lead to excessive litigation in domestic courts.

27. Article 27 - Signature and Ratification, Acceptance or Approval

Article 27 states that MLI instrument shall be open for signature by all states, jurisdictions and territories. It is subject to ratification, acceptance or approval.

28. Article 28 - Reservations

1. List of reservations given in respective articles of MLI instrument
2. It provides provisional or definitive list of reservations
3. Applicability of Additional Reservations (For With-holding and Non-with-holding cases) – On or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depository i.e. 1st day of the following year after completion of 6 Months from the date of Communication.

29. Article 29 - Notifications

1. List of notifications given in respective articles of MLI instrument
2. It provides provisional or definitive list of notifications
3. Applicability of Additional notifications (For With-holding and Non-with-holding cases) - On or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depository i.e. 1st day of the following year after completion of 6 Months from the date of Communication.

30. Article 30 - Subsequent Modifications of Covered Tax Agreement

The MLI instrument is not intended to freeze in time the underlying agreement and that CJ's may of course decide to further amend the underlying agreement after it has been modified by the Convention. It is without prejudice to any subsequent modifications to CTAs which may be agreed between the CJ's to the CTA.

31. Article 31 - Conference of the Parties

The parties may convene a Conference of the Parties for the purposes of taking any decisions or exercising any functions. The Conference of the Parties shall be served by the Depository.

32. Article 32 - Interpretation and Implementation

Any question arising as to the interpretation or implementation of MLI instrument may be addressed by a Conference of the Parties convened as per above-mentioned article 31.

33. Article 33 - Amendment in MLI Instrument

Any Party may propose an amendment to MLI instrument by submitting the proposed amendment to the Depository. A Conference of the Parties may be convened to consider the proposed amendment as per article 31.

34. Article 34 - Entry Into Force

If someone wants to apply DTAA provisions of India and other country, then they need to refer following documents viz.

- Bilateral DTAA Agreement,
- MLI ratified by India and MLI ratified by other country
- Positions adopted by each country
- Options – Common/ Different
- Application of relevant article – Symmetrical/ Asymmetrical
- PPT/ SLOB test and GAAR

Mere ratification by India does not mean that MLI has become effective for all bilateral agreements India has with other jurisdictions.

Article 34 and 35 of the MLI Convention deals with entry into force and entry into effect. In order to check applicability of MLI, person should check the provisions related to date of entry into force and date of entry into effect.

Article 34 – Entry into force

a) For first five countries that ratify MLI, MLI shall enter into force from:

First day of the month after expiration of 3 calendar months from date of deposit of fifth instrument of ratification, acceptance or approval

b) For countries that subsequently ratify MLI, MLI shall enter into force from:

First day of the month after expiry of 3 calendar month from date of deposit of instrument of ratification, acceptance or approval [i.e. 1st day of following month after completion of 3 months from the date of Deposit]

35. Article 35 - Entry Into Effect

i) Applicability of MLI with respect to events giving rise to With-holding taxes:

MLI provisions to have effect from the 1st day of the next calendar year from the latest of the following date:-[i.e. 1st day of following year from latest of Date of entry into force]

- a. Date of Entry into Force for 1st contracting jurisdiction;
- b. Date of Entry into Force for 2nd contracting jurisdiction;

II) Applicability of MLI with respect to other cases (Non-withholding of taxes):

MLI provisions to have effect on or after an expiry of 6 calendar months from the latest of the following dates:-[6 Months from the latest of the Date of entry into force]

- a. Date of Entry into Force for 1st contracting jurisdiction;
- b. Date of Entry into Force for 2nd contracting jurisdiction;

Observations	
1.	The definition of 'events' has not given in MLI instrument. As per general understanding, the events—normally includes passive Income - Dividend, Interest, FTS, Royalties and Capital Gains etc.
2.	Meaning of Other Cases – Normally includes active Income - Business and Profession, Permanent Establishment cases and Independent Personal Services ('IPS') etc.
3.	India has opted for financial year instead of Calendar year.

Practical case study on article 34 and 35

a) India and United Arab Emirates ('UAE') DTAA:

i) With-Holding Cases:

India deposited the instrument of ratification on 25th June, 2019 and UAE deposited the same on 29th May, 2019. Accordingly, the date of entry into force (i.e. 3 months from the date of deposit of MLI) for India and UAE is given below:

- a. For India - 1st October, 2019 and
- b. For UAE - 1st September, 2019

Based on the above, the date of entry into effect (1st day of the next calendar year from the latest of the date of entry into force) for India and United Arab Emirates ('UAE') is given below:

- a. For India - 1st April, 2020 and
- b. For UAE - 1st January, 2020

Observations

1. In this case, residents of India making payment to Residents of UAE needs to refer to MLI provisions for event occurring on or after 01st April, 2020 for the purpose of withholding tax implications.
2. However, since UAE has proceeded with the term “Calendar Year” residents of UAE need to refer to MLI provisions for events occurring on or after 1st January, 2020.
3. This means that MLI for India – UAE Covered Tax Agreement enters into force for withholding taxes on 1st January, 2020 for UAE residents while for India Residents making payment to UAE residents the date is 1st April, 2020.

II) Other than With-Holding Cases:

India deposited the instrument of ratification on 25th June, 2019 and UAE deposited the same on 29th May, 2019. Accordingly, the date of entry into force (i.e. 3 months from the date of deposit of MLI) for India and UAE is given below:

- a. For India - 1st October, 2019 and
- b. For UAE - 1st September, 2019

Based on the above, the date of entry into effect (i.e. 6 months from the latest of the dates of entry into force) for India and United Arab Emirates (‘UAE’) is given below:

- a. For India - 1st April, 2020 and
- b. For UAE - 1st April, 2020

Observations

1. Taxpayers and Income Tax Authorities can refer to provisions of MLI from the above mentioned dates in their respective contracting jurisdiction.
2. In the above mentioned example, Taxpayers/ Indian Tax Authorities can apply provisions of MLI Instrument on the CTA of India and UAE only from 1st April, 2020 as 6 months from the latest date on which MLI Instrument enters into force for India & UAE is 1st October, 2019.

III) Applicability of MLI in respect of New CTAs:

- a) With respect to events giving rise to taxes withheld at source: From the 1st day of the next calendar year beginning on or after 30 days from the date of

the communication by the Depository of the notification of the extension of the list of agreements. [i.e. 1st Day of the following year after completion of 30 days from the date of Communication]

- b) **With respect to Non-withholding cases:** On or after nine calendar months from the date of the communication by the Depository of the notification of the extension of the list of agreements [i.e. after completion of 9 months from the date of Communication]

36. Article 36 - Entry Into Effect of Part VI (i.e. Arbitration)

This article deals with entry into effect of Part VI i.e. Arbitration related provisions.

37. Article 37 - Withdrawal

Any Party may withdraw from the Convention at any time by means of a notification addressed to the Depository. It's a bilateral Process. Unilateral withdrawal is not allowed.

38. Article 38 - Relation with Protocols

Article 38 provides that the MLI instrument may be supplemented with one or more protocols.

39. Article 39 – Depository

Article 39 provides that the Secretary-General of the Organization for Economic Co-operation and Development is the depository of the MLI and any protocols pursuant to Article 38. The depository shall maintain publicly available lists of CTAs, reservations made by Parties, and notifications made by Parties.

9

Overview of BEPS Action Plan and its implementation in India

Sr. No.	Action name	Action objective
1	Digital economy	<ul style="list-style-type: none"> • Rework existing tax rules to deal with digital economy • May involve introduction of VAT/ GST on digital goods, virtual PE rules, WHT, SEP etc.
2	Hybrid mismatch	<ul style="list-style-type: none"> • To curb abuse of hybrid instruments/ entities • May involve ordering rules to specify primary and defensive rules with respect to the deduction and the exemption
3	CFC rules	<ul style="list-style-type: none"> • Curb tax deferral through parking of profits to low/new tax jurisdictions. • May involve identification of best practices and likely a proposal for some form of minimum standard for CFC rules
4	Limit base erosion via interest deductions	<ul style="list-style-type: none"> • Address thin capitalization issues
5	Counter harmful tax practices	<ul style="list-style-type: none"> • Curb tax competition among countries to attract investments • E.g., Low/ reduced tax rates, Preferential tax regime-IPRs, Treaty Shopping, Tax Inversions etc.
6	Prevent treaty abuse	<ul style="list-style-type: none"> • Objective of treaty is not to create double non-taxation. May involve introduction of US style LOB or UK style GAAR (principle purpose test) rules
7	Prevent artificial avoidance of PE	<ul style="list-style-type: none"> • Amending PE article in tax treaties to remove exemptions to PE clause and address artificial avoidance arrangements
8	TP aspects of intangibles	<ul style="list-style-type: none"> • Ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in line with value creation
9	Risks and capital	<ul style="list-style-type: none"> • Substance over form w.r.t. capital contribution or allocation of risks

Sr. No.	Action name	Action objective
10	Other high risk transactions	<ul style="list-style-type: none"> Develop rules to prevent BEPS involving transactions which would not (or would only very rarely) occur between third parties. e.g., intra group services, management fees, cost sharing arrangements etc.
11	Analyse data on BEPS	<ul style="list-style-type: none"> Analysing economic impact of actions taken to address BEPS on ongoing basis (taxpayer confidentiality, compliance costs and burdens on taxpayers and tax administrations)
12	Disclosure of aggressive tax planning	<ul style="list-style-type: none"> Develop mandatory disclosure rules for aggressive or abusive transactions, arrangements or structures
13	Re-examine TP documentation	<ul style="list-style-type: none"> Introducing three tiered documentation consisting of Master file, Local file and CbC reporting template
14	Dispute resolution	<ul style="list-style-type: none"> Improving effectiveness of MAP and arbitration provisions
15	Multilateral instrument	<ul style="list-style-type: none"> Develop multilateral instruments which would be signed by all countries to agree upon common treaty arrangements

Implementation of BEPS Action in India

BEPS Action Plan	Implementation In India	With Effect From
Action Plan 1: Digital economy	Equalization levy introduced	01-Jun-16
Action Plan 2: Hybrid mismatches	No amendment in Indian tax law	Not applicable
Action Plan 3: CFC Rules	Not implemented	Not applicable
Action Plan 4: Interest deductions	Limit on interest deduction	Financial year 2017-18
Action Plan 5: Harmful tax practices	Concessional tax regime for royalty on patents	Financial year 2016-17
Action Plan 6: Prevent treaty abuse	General anti-avoidance rule effective	Financial year 2017-18
Action Plan 7: Artificial Avoidance of PE	Indian tax treaties typically have wider definition of PE	-
Action Plan 11: Data collection & analysis	Not implemented	Not applicable

BEPS Action Plan	Implementation In India	With Effect From
Action Plan 12: Disclosure of aggressive tax planning	Not implemented	Not applicable
Action Plan 14: Dispute resolution mechanism	Multilateral instrument is signed – to the extent agreed by the participating countries	-
Action Plan 15: Multilateral instrument	India signed the multilateral instrument on 7th June 2017	-

10 India's position on MLI and Comparison of MLI positions adopted by the Top 15 countries

10A. India's Position on MLI Instrument

<i>Article of the MLI</i>	<i>Brief description of the Article</i>	<i>India's Position</i>
	Date of entry into effect (Withholding cases)	01st Apr, 2020
	Date of entry into effect (Other than above)	01st Apr, 2020
BEPS Action Plan 2 - Hybrid mismatches		
Article 2 Interpretation of Terms	Notification on Covered Tax Agreements ('CTA')	93 tax treaties
Article 3 Transparent entities	Income derived by such entities - considered to be income of a resident of the country – as per laws in force	Not to apply to its CTA (Reservation by India)
Article 4 Dual resident entities	Competent authorities – Determine by mutual agreement – Residential status of Non-Individual cases – Otherwise treaty benefits would be denied [Article 4(1)]	To apply to its CTA
Article 5 Application of methods for elimination of double taxation	<p>Recommends 3 options for elimination of double taxation:</p> <p>Option A – State of residence would not exempt income from being taxed - Where state of source exempt/ taxed such income at reduced rate – Deduction of taxes paid allowed in state of residence</p> <p>Option B – Does not allow application of exemption method with respect to dividends that are deductible in the state of source</p> <p>Option C – Application of credit method</p>	<p>Option C selected and notified following CTAs that contain provision as Option C:</p> <p>a) Bulgaria</p> <p>b) Egypt</p> <p>c) Greece</p> <p>d) Slovak Republic</p>

<i>Article of the MLI</i>	<i>Brief description of the Article</i>	<i>India's Position</i>
BEPS Action Plan 6 - Treaty abuse		
Article 6 Purpose of a CTA	Modify preamble text– Not allowing Non/reduced taxation cases through evasion/avoidance/ treaty shopping [Article 6(1)] Optional text - Economic relationship and enhance co-op [Article 6(3)]	Silent on its position. Hence, it would apply to its CTA
Article 7 Prevention of treaty abuse	Envisages three approaches in bilateral treaties to curb treaty abuse: a) Principal Purpose Test (“PPT”) - [Article 7(1)] b) Competent Authority Test [Article 7(4)] c) Simplified Limitation on Benefits Clause (“SLOB”) [Article 7(6)] d) Detailed LOB (“DLOB”) Clause	Accepted to apply PPT - Interim measure and Choice of optional provision - SLOB (Through bilateral negotiations)
Article 8 Dividend transfer transactions	Insertion of 365 days min holding criteria – For concessional rates under treaties	To apply to its CTA (except India-Portugal treaty)
Article 9 Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property	Such gains - Taxed in other contracting state -Provided derived more than a specified % of their value (Any time - 365 days) from real property [Article 9(1)] Optional provision - Such gains - Taxed in other contracting state – Derived more than 50% of their value (Any time - 365 days) from real property [Article 9(4)]	To apply to its CTA
Article 10 Anti-abuse rule for PE situated in third jurisdictions	No benefits – In respect of income derived by 3rd country PE –If tax rate is < 60% of that in residence country	Silent on its position. Hence, it would apply to its CTA
Article 11 Application of tax agreements to restrict a party’s right to tax its own residents	CTA shall not affect -Rights of a country of residence to tax its own residents - subject to certain exceptions	Silent on its position. Hence, it would apply to its CTA

<i>Article of the MLI</i>	<i>Brief description of the Article</i>	<i>India's Position</i>
BEPS Action Plan 7 - Avoidance of PE status		
Article 12 Artificial avoidance of PE through Commissionaire and similar arrangements	Widens PE scope – Includes - Habitually concludes contracts or habitually plays a principal role in it (Except Independent agent cases)	To apply to its CTA
Article 13 Artificial avoidance of PE status by exemption of specific activity	<p>Option A – Listed activities – Not deemed PE – Overall result should be preparatory/ auxiliary</p> <p>Option B – Specific activity exemption - Irrespective of preparatory/ auxiliary</p> <p>Article 13(4) - PE exception activities - Not apply to - Connected person's Business activities - Activities constitute complementary functions - Forming part of Cohesive business function</p>	Selected to apply Option A.
Article 14 Splitting up of contracts	Anti-contract splitting rules - Deemed PE - For building sites, construction or installation projects	Silent on its position. Hence, it would apply to its CTA
Article 15 Definition of a person “closely related” to an enterprise	Defines the term “person closely related”, which is relevant in the context of Articles 12, 13 and 14.	Silent on its position. Hence, it would apply to its CTA
Article 16 Mutual Agreement Procedure (“MAP”)	Best practices - Improving dispute resolution and the procedural requirements for MAP implementation	Opted a bilateral notification or consultation process
Article 17 Corresponding adjustments	To avoid economic double taxation - Transfer Pricing adjustments - Competent Authority - Recommends corresponding adjustments	Reservation to exclude those CTAs that contain a similar provision
Article 18 to Article 26 Arbitration	Provides for mandatory binding arbitration- where competent authorities fails to resolve cases under MAP	Not to apply to its CTA (Reservation by India)
Article 35 Entry into Effect	Indicated to substitute “taxable period” for “calendar year”. Also, indicated reservation to replace the reference dates	To substitute “taxable period” for “calendar year”

10B. Comparison of MLI Positions Adopted by Top 15 Countries

Article of the MLI	Japan	United Arab Emirates ('UAE')	Australia	Belgium
Date of entry into effect (Withholding cases)	01st Jan, 2020	01st Jan, 2020	01st Jan, 2020	01st Jan, 2020
Date of entry into effect (Other than above)	01st Apr, 2020	01st Apr, 2020	01st Apr, 2020	01st Apr, 2020
BEPS Action Plan 2 - Hybrid mismatches				
Article 2 Interpretation of Terms	India included in CTA	India included in CTA	India included in CTA	India included in CTA
Article 3 Transparent entities	Not applicable to India-Japan treaty	Not applicable to India-UAE treaty (Reservation by UAE)	Not applicable to India-Australia treaty	Not applicable to India-Belgium treaty
Article 4 Dual resident entities	Apply to India-Japan treaty (Last sentence in Article 4(1) replaced with 4(3)(e))	Not applicable to India-UAE treaty (Reservation by UAE)	Apply to India-Australia treaty (Last sentence in Article 4(1) replaced with 4(3)(e))	Not applicable to India-Belgium treaty (Reservation by Belgium)
Article 5 Application of methods for elimination of double taxation	Not applicable to India-Japan treaty	Not applicable to India-UAE treaty	Not applicable to India-Australia treaty	Not applicable to India-Belgium treaty
BEPS Action Plan 6 - Treaty abuse				
Article 6 Purpose of a CTA	Preamble text given in Article 6(1) would be included in India-Japan treaty. Japan chooses Optional text, however same won't apply	Preamble text given in Article 6(1) would be included in India-UAE treaty. UAE chooses Optional text however, same won't apply	Preamble text given in Article 6(1) would be included in India-Australia treaty. Australia chooses Optional text however, same won't apply	Preamble text given in Article 6(1) would be included in India-Belgium treaty. Belgium chooses Optional text however, same won't apply

Article of the MLI	Japan	United Arab Emirates ('UAE')	Australia	Belgium
Article 7 Prevention of treaty abuse	PPT would apply to India-Japan treaty. SLOB and Article 7(4) won't apply	UAE chooses Article 7(4). PPT would apply to India-UAE treaty. Article 7(4) and SLOB won't apply	Australia chooses Article 7(4). PPT would apply to India-Australia treaty. Article 7(4) and SLOB won't apply	Belgium chooses Article 7(4). PPT would apply to India-Belgium treaty. Article 7(4) and SLOB won't apply
Article 8 Dividend transfer transactions	Not applicable to India-Japan treaty (Reservation by Japan)	Not applicable to India-UAE treaty (Reservation by UAE)	Not applicable to India-Australia treaty	Not applicable to India-Belgium treaty
Article 9 Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property	Article 9(4) would be included in India-Japan treaty	Not applicable to India-UAE treaty (Reservation by UAE)	Article 9(1) would be included in India-Australia treaty. Article 9(4) won't apply	Article 9(1) would be included in India-Belgium treaty. Article 9(4) won't apply
Article 10 Anti-abuse rule for PE situated in third jurisdictions	Apply to India-Japan treaty	Not applicable to India-UAE treaty (Reservation by UAE)	Not applicable to India-Australia treaty (Reservation by Australia)	Not applicable to India-Belgium treaty (Reservation by Belgium)
Article 11 Application of tax agreements to restrict a party's right to tax its own residents	Not applicable to India-Japan treaty (Reservation by Japan)	Not applicable to India-UAE treaty (Reservation by UAE)	Apply to India-Australia treaty	Apply to India-Belgium treaty
BEPS Action Plan 7 - Avoidance of PE status				
Article 12 Artificial avoidance of PE through Commissionaire and similar arrangements	Apply to India-Japan treaty	Not applicable to India-UAE treaty (Reservation by UAE)	Not applicable to India-Australia treaty (Reservation by Australia)	Apply to India-Belgium treaty

Article of the MLI	Japan	United Arab Emirates ('UAE')	Australia	Belgium
Article 13 Artificial avoidance of PE status by exemption of specific activity	Option A and Article 13(4) apply to India-Japan treaty (Japan Chooses Option A)	Not applicable to India-UAE treaty (Reservation by UAE)	Option A and Article 13(4) apply to India-Australia treaty (Australia selected Option A)	Article 13(4) apply to India-Belgium treaty (Belgium Chooses Option B)
Article 14 Splitting up of contracts	Not applicable to India-Japan treaty (Reservation by Japan)	Not applicable to India-UAE treaty (Reservation by UAE)	Apply to India-Australia treaty	Not applicable to India-Belgium treaty (Reservation by Belgium)
Article 15 Definition of a person “closely related” to an enterprise	Apply to India-Japan treaty	Not applicable to India-UAE treaty (Reservation by UAE)	Apply to India-Australia treaty	Apply to India-Belgium treaty
Article 16 Mutual Agreement Procedure (“MAP”)	Not applicable to India-Japan treaty	2nd sentence of Article 16(1) - Applicable to India-UAE treaty	1st and 2nd sentence of Article 16(3) - Applicable to India-Australia treaty	2nd sentence of Article 16(1) and Article 16(3) - Applicable to India-Belgium treaty
Article 17 Corresponding adjustments	Apply to India-Japan treaty	Apply to India-UAE treaty	Not applicable to India-Australia treaty	Apply to India-Belgium treaty
Article 18 to Article 26 Arbitration	Not applicable to India-Japan treaty (Japan Chooses Arbitration)	Not applicable to India-UAE treaty	Not applicable to India-Australia treaty (Australia Chooses Arbitration)	Not applicable to India-Belgium treaty (Belgium Chooses Arbitration)
Article 35 Entry into Effect	-	-	-	-

Article of the MLI	Canada	Mauritius/ China/ Germany	Singapore	Ireland
Date of entry into effect (Withholding cases)	01st Jan, 2020	Not Applicable	01st Jan, 2020	01st Jan, 2020
Date of entry into effect (Other than above)	01st June, 2020	Not Applicable	01st Apr, 2020	01st Apr, 2020
BEPS Action Plan 2 - Hybrid mismatches				
Article 2 Interpretation of Terms	India included in CTA	India is not included in CTA	India included in CTA	India included in CTA
Article 3 Transparent entities	Not applicable to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty (Reservation by Ireland)
Article 4 Dual resident entities	Apply to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Apply to India-Ireland treaty
Article 5 Application of methods for elimination of double taxation	Not applicable to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty
BEPS Action Plan 6 - Treaty abuse				
Article 6 Purpose of a CTA	Preamble text given in Article 6(1) would be included in India-Canada treaty.	Not Applicable	Preamble text given in Article 6(1) would be included in India-Singapore treaty. Singapore chooses Optional text however, same won't apply	Preamble text given in Article 6(1) would be included in India-Ireland treaty. Ireland chooses Optional text however, same won't apply

Article of the MLI	Canada	Mauritius/ China/ Germany	Singapore	Ireland
Article 7 Prevention of treaty abuse	Both countries has accepted to apply PPT - Interim measure and Choice of optional provision - SLOB (Through bilateral negotiations). PPT would apply to India-Canada treaty. Article 7(4) and SLOB won't apply	Not Applicable	Singapore chooses Article 7(4). PPT would apply to India-Singapore treaty. Article 7(4) and SLOB won't apply	Ireland chooses Article 7(4). PPT would apply to India-Ireland treaty. Article 7(4) and SLOB won't apply
Article 8 Dividend transfer transactions	Apply to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty
Article 9 Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property	Article 9(4) would be included in India-Canada treaty. Article 9(1) won't apply	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Article 9(4) would be included in India-Ireland treaty. Article 9(1) won't apply
Article 10 Anti-abuse rule for PE situated in third jurisdictions	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty (Reservation by Ireland)
Article 11 Application of tax agreements to restrict a party's right to tax its own residents	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty (Reservation by Ireland)

Article of the MLI	Canada	Mauritius/ China/ Germany	Singapore	Ireland
BEPS Action Plan 7 - Avoidance of PE status				
Article 12 Artificial avoidance of PE through Commissionaire and similar arrangements	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Not applicable to India-Ireland treaty (Reservation by Ireland)
Article 13 Artificial avoidance of PE status by exemption of specific activity	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty [Singapore chooses Option B and it has reservation on Article 13(4)]	Article 13(4) apply to India-Ireland treaty [Ireland chooses Option B]
Article 14 Splitting up of contracts	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Apply to India-Ireland treaty
Article 15 Definition of a person “closely related” to an enterprise	Not applicable to India-Canada treaty (Reservation by Canada)	Not Applicable	Not applicable to India-Singapore treaty (Reservation by Singapore)	Apply to India-Ireland treaty
Article 16 Mutual Agreement Procedure (“MAP”)	2nd sentence of Article 16(1) - Applicable to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty	Not applicable to India-Ireland treaty
Article 17 Corresponding adjustments	Not applicable to India-Canada treaty	Not Applicable	Not applicable to India-Singapore treaty	Not applicable to India-Ireland treaty

Article of the MLI	Canada	Mauritius/ China/ Germany	Singapore	Ireland
Article 18 to Article 26 Arbitration	Not applicable to India-Canada treaty (Canada Chooses Arbitration)	Not Applicable	Not applicable to India-Singapore treaty (Singapore Chooses Arbitration)	Not applicable to India-Ireland treaty (Ireland Chooses Arbitration)
Article 35 Entry into Effect	-	-	-	-

Article of the MLI	Luxembourg	USA	United Kingdom ('UK')	France
Date of entry into effect (Withholding cases)	01st Jan, 2020	NA	01st Jan, 2020	01st Jan, 2020
Date of entry into effect (Other than above)	01st Apr, 2020	NA	01st Apr, 2020	01st Apr, 2020
BEPS Action Plan 2 - Hybrid mismatches				
Article 2 Interpretation of Terms	India included in CTA	India has included in CTA. However, USA is not a signatory to the MLI	India included in CTA	India included in CTA
Article 3 Transparent entities	Not applicable to India-Luxembourg treaty	Not Applicable	Not applicable to India-UK treaty	Not applicable to India-France treaty (Reservation by France)
Article 4 Dual resident entities	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Apply to India-UK treaty	Not applicable to India-France treaty (Reservation by France)

Article of the MLI	Luxembourg	USA	United Kingdom ('UK')	France
Article 5 Application of methods for elimination of double taxation	Not applicable to India-Luxembourg treaty (Option A chooses by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Not applicable to India-France treaty (Reservation by France)
BEPS Action Plan 6 - Treaty abuse				
Article 6 Purpose of a CTA	Preamble text given in Article 6(1) would be included in India-Luxembourg treaty. Luxembourg chooses Optional text however, same won't apply	Not Applicable	Preamble text given in Article 6(1) would be included in India-UK treaty. UK chooses Optional text however, same won't apply	Preamble text given in Article 6(1) would be included in India-France treaty. France chooses Optional text however, same won't apply
Article 7 Prevention of treaty abuse	Luxembourg chooses Article 7(4). PPT would apply to India-Luxembourg treaty. Article 7(4) and SLOB won't apply	Not Applicable	UK chooses Article 7(4). PPT would apply to India-UK treaty. Article 7(4) and SLOB won't apply	PPT would apply to India-France treaty. Article 7(4) and SLOB won't apply
Article 8 Dividend transfer transactions	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Not applicable to India-France treaty

Article of the MLI	Luxembourg	USA	United Kingdom ('UK')	France
Article 9 Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Article 9(4) would be included in India-France treaty. Article 9(1) won't apply
Article 10 Anti-abuse rule for PE situated in third jurisdictions	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Not applicable to India-France treaty (Reservation by France)
Article 11 Application of tax agreements to restrict a party's right to tax its own residents	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Apply to India-UK treaty	Not applicable to India-France treaty (Reservation by France)
BEPS Action Plan 7 - Avoidance of PE status				
Article 12 Artificial avoidance of PE through Commissionaire and similar arrangements	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Apply to India-France treaty
Article 13 Artificial avoidance of PE status by exemption of specific activity	Not applicable to India-Luxembourg treaty [Luxembourg chooses Option B and it has reservation on Article 13(4)]	Not Applicable	Article 13(4) apply to India-UK treaty	Article 13(4) apply to India-France treaty (France selected Option B)

Article of the MLI	Luxembourg	USA	United Kingdom ('UK')	France
Article 14 Splitting up of contracts	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Not applicable to India-UK treaty	Not applicable to India-France treaty (Reservation by France)
Article 15 Definition of a person “closely related” to an enterprise	Not applicable to India-Luxembourg treaty (Reservation by Luxembourg)	Not Applicable	Apply to India-UK treaty	Apply to India-France treaty
Article 16 Mutual Agreement Procedure (“MAP”)	Not applicable to India-Luxembourg treaty	Not Applicable	2nd sentence of Article 16(1)/ 16(2)/ 16(3) applicable to India-UK treaty	Not applicable to India-France treaty
Article 17 Corresponding adjustments	Not applicable to India-Luxembourg treaty	Not Applicable	Not applicable to India-UK treaty	Apply to India-France treaty
Article 18 to Article 26 Arbitration	Not applicable to India-Luxembourg treaty (Luxembourg Chooses Arbitration)	Not Applicable	Not applicable to India-UK treaty (UK Chooses Arbitration)	Not applicable to India-France treaty (France Chooses Arbitration)
Article 35 Entry into Effect	-	Not Applicable	-	-

11 Glossary of Abbreviations

Sr. No.	Abbreviation	Definition/ Description
1	MLI	Multilateral Instrument
2	CJ	Contracting Jurisdiction
3	CTA	Covered Tax Agreement
4	DTAA	Double Taxation Avoidance Agreement
5	MAP	Mutual Agreement Procedure
6	PE	Permanent Establishment
7	CA	Competent Authorities
8	LOB	Limitation of Benefits
9	SLOB	Simplified Limitation of Benefits
10	TE	Transparent Entities
11	CFC	Controlled Foreign Corporation
12	OECD	Organisation for Economic Co-Operation and Development
13	PPT	Principle Purpose Test
14	GAAR	General Anti Avoidance Rules
15	BEPS	Base Erosion and Profit Shifting
16	MNE	Multi-National Enterprises

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