Double Taxation Avoidance Treaty: Mauritius keeps tax treaty with India outside purview of MLI

NEW DELHI: Mauritius has kept its double taxation avoidance treaty with India out of the purview of the global agreement that seeks to prevent companies from avoiding taxes.

Mauritius has notified 23 of its tax treaties for modification by OECD's Multilateral Instrument (MLI) to implement tax treaty-related measures to prevent Base Erosion and Profit Shifting (BEPS).

The island nation has opted for Principal Purpose Test (PPT) for the purpose of combating treaty abuse. Under this rule treaty benefit is denied where principal purpose of investment is to gain tax benefit.

The island nation has conveyed to the OECD that Mauritius will have a bilateral discussions with countries not covered to adopt a limitation of benefits provision.

This means that investors using the nation to route their investments into India will have to wait for clarity on what all standards it adopts. But, if it does apply similar standards as prescribed under the global treaty, it could impact existing investments, say tax experts.

"The PPT rule (if adopted by both countries) could have an impact on grandfathering of investments made before March 2017 which are still protected from source taxation on capital gains under the India-Mauritius treaty as amended in 2016," said Jayesh Sanghvi, National Leader – International Tax Services, EY India.

On June 7, 2017, 68 jurisdictions, including India, signed the multilateral convention to implement tax treaty-related measures to prevent BEPS, simply attempts to shift tax base and profits to lower tax jurisdictions.

In an official statement, Mauritius expressed its commitment to the BEPS project and stated that the tax treaties which are not covered by the MLI will be subject to a bilateral discussion with the respective treaty partners.

One will have to wait and watch how the minimum standards (especially the PPT rule) will be achieved in the India-Mauritius treaty and its impact on existing and future holding structures, Sanghvi said.

India and Mauritius would have to discuss and negotiate the changes to the tax treaty bilaterally, which may turn out to be a time consuming process.

"Owing to this exclusion, the terms of MLI shall not apply to any transaction entered between tax residents of India and Mauritius," said Rakesh Nangia, managing partner, Nangia & Co LLP.

"On the backdrop of the India-Mauritius tax treaty not being included by Mauritius for the MLI, it needs to be seen to what extent the BEPS recommendations would be bilaterally agreed between the two countries," said a PwC note.

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