

RATIFICATION OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

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Cabinet

Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

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The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has approved the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

Impact:

The Convention will modify India's treaties in order to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

Details:

- i. India has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which was signed by the Hon'ble Finance Minister Sh. Arun Jaitley at Paris on 07/06/2017 on behalf of India.
- ii. The Multilateral Convention is an outcome of the OECD / G20 Project to tackle Base Erosion and Profit Shifting (the "BEPS Project") i.e., tax planning strategies that exploit gaps and mismatches 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 tax being paid. The BEPS Project identified 15 actions to address base erosion and profit shifting (BEPS) in a comprehensive manner.
- iii. India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalization of the text of the Multilateral Convention, starting May 2015. The text of the Convention and the accompanying Explanatory Statement was adopted by the Ad hoc Group on 24 November 2016.
- iv. The Convention enables all signatories, inter alia, to meet treaty-related minimum standards that were agreed as part of the Final BEPS package, including the minimum standard for the prevention of treaty abuse under Action 6.
- v. The Convention will operate to modify tax treaties between two or more Parties to the Convention. It will not function in the same way as an amending protocol to a single

existing treaty, which would directly amend the text of the Covered Tax Agreement. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

vi. The Convention will modify India's treaties in order to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

Background:

The Convention is one of the outcomes of the OECD/G20 project, of which India is a member, to tackle base erosion and profit shifting. The Convention enables countries to implement the tax treaty related changes to achieve anti-abuse BEPS outcomes through the multilateral route without the need to bilaterally re-negotiate each such agreement which is burdensome and time consuming. It ensures consistency and certainty in the implementation of the BEPS Project in a multilateral context. Ratification of the Multilateral Convention will enable application of BEPS outcomes through modification of existing tax treaties of India in a swift manner. The Cabinet Note seeking ratification of the MLI was sent to the Cabinet on 16.04.2019 for consideration. Since the said Note for Cabinet could not be taken up in the Cabinet, due to urgency, the Hon'ble Prime Minister vide Cabinet Secretariat I.D. No. 216/1/2/2019-Cab dated 27.05,2019 has approved Ratification of MLI and India's Final Position under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 with a direction that ex-post facto approval of the Cabinet be obtained within a month. Consequent to approval under Rule 12, a separate request has already been sent to L&T Division, MEA for obtaining instrument of ratification from the Hon'ble President of India vide this office OM F.No. 500/71/2015-FTD-I/150 dated 31/05/2019.

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