



Cabinet approves signing of the Multilateral Convention to implement tax treaty related measures to prevent Base Erosion and Profit shifting by India

Background

The final Base Erosion Profit Shifting (BEPS) project identified 15 actions to address BEPS in a comprehensive manner. Implementation of the final BEPS project requires changes to more than 3000 bilateral tax treaties which will be burdensome and time consuming.

In view of the same, the Convention was conceived as a Multilateral instrument (the Convention/MLI) which would swiftly modify all covered bilateral tax treaties (Covered Tax Agreements/CTA) to implement BEPS measures.

For this purpose, formation of an adhoc group for the development of such MLI was endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015.

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 finalisation of the text of the 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.

Cabinet approval for signing of the Multilateral Convention

The Convention has been opened for signature as on 31 December 2016 and a first joint signing ceremony is scheduled to be held in Paris on 7 June 2017. Signature is the first step in the process of expressing consent to be bound by the Convention, which will become binding only upon ratification.

The Union Cabinet chaired by the Prime Minister has given its approval for the Multilateral Convention to implement tax treaty related measures to prevent BEPS.

It is also proposed to make a provisional list of CTA and a provisional list of reservations at the time of signature in June 2017. Final lists for both will be submitted by India at the time of submission of instrument of ratification.

The Convention implements two minimum standards relating to prevention of treaty abuse and dispute resolution through Mutual Agreement Procedure. The Convention will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the CTA. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

Signing of the Multilateral Convention will enable the application of BEPS outcomes through modification of existing tax treaties of India in a swift manner. It is also in India's interest to ensure that all its treaty partners adopt the BEPS anti-abuse outcomes.

Our comments

The Cabinet approval to the MLI can be touted as marking the beginning of one of the most awaited developments for this year in the regime of international tax laws of India. India has, since the

initiation of the actions developed by the OECD to address the BEPS concerns, committed itself to the BEPS initiative. India has been a part of the ad hoc group of more than 100 countries which worked on an equal footing on the finalisation of the text of the MLI.

Though the step has been taken in the right direction by India, yet it would be sometime before the final BEPS measures are implemented in the bilateral tax treaties through the MLI. Even though it has been proposed to make a provisional list of CTA and a provisional list of reservations at the time of signature in June 2017, the exact nature of the amendments that would be carried out in the tax treaties would be clear only when the final lists for both will be submitted by India at the time of submission of instrument of ratification and further when the same is also ratified by the other country involved.

It would be interesting to see what measures India would adopt through the MLI for amending the over 90 bilateral tax treaties as one has already seen amendment in the recent times to the bilateral tax treaties India has with Mauritius, Cyprus and Singapore in the context of treaty abuse, etc. that involves implementation of the BEPS measures. In the Indian context, the impact of MLI could only be analysed when the BEPS measures are finally incorporated in the tax treaties that are recommended under the Action plans.

As the MLI is an outcome of the BEPS project to tackle the issue faced by governments across the world on account of BEPS through tax planning strategies, the success from a global perspective as well, would now depend on how swiftly all the countries involved adopt the measures recommended in the MLI and amend the tax treaties across the world.



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