

# TAX FLASH NEWS

10 September 2019



## India releases synthesised text for the application of the India-UAE tax treaty

Recently, the Government of India has released the synthesised text for the application of the tax treaty between India and the United Arab Emirates (UAE) as modified by the Multilateral Convention (MLI) to implement tax treaty related measures to prevent Base Erosion and Profit Shifting (BEPS). This document was prepared on the basis of the reservations and notifications submitted to Organisation for Economic Co-operation and Development (OECD) by India on 25 June 2019 and UAE on 29 May 2019 respectively.

Key highlights of the synthesised text are as follows:

### Applicability of MLI provisions

The MLI enters into force for India on 1 October 2019 and thus has effect as follows:

- With respect to deduction of tax at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after first day of the next taxable period that begins on or after 1 October 2019 i.e. for transaction on or after 1 April 2020.
- With respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

The MLI has come into force for UAE on 1 September 2019

- With respect to taxes withheld at sources on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or before 1 January 2020
- With respect to all other taxes levied by UAE, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

### Preamble

The scope of the existing preamble is expanded to include MLI minimum standard (Article 6 – Purpose of Covered Tax Agreement). The following preamble text is now included in the preamble of the tax treaty:

‘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 the Agreement for the indirect benefit of residents of third jurisdictions)’.

### Secondary adjustment

The existing tax treaty does not have clause with respect to the secondary adjustment. The synthesised text provides that:

- Where a State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and
- the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises,
- then that other State 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 tax treaty and the competent authorities of the States shall if necessary consult each other.

## Limitation of benefit (LOB) clause

Article 29 of limitation of benefit (LOB) has been replaced by paragraph 1 of Article 7 (prevention of treaty abuse) of the MLI. The new article provides that the benefit under the tax treaty shall not be granted in respect of an item of income 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 tax treaty.

## Mutual agreement procedure (MAP)

Existing Article 27(1)<sup>1</sup> dealing with MAP provides that the case under MAP must be presented within two years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the tax treaty. The second sentence of the Article 27(1) of the tax treaty is replaced by the second sentence of paragraph 1 of Article 16 (MAP) of the MLI.

Thus now the case under MAP must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

## Our comments

India is 28th country which has ratified and deposited MLI instrument with the OECD. The MLI will come into force in India with effect from 1 October 2019. Out of all the countries who have already ratified and deposited the instrument of MLI, certain countries are forming part of India's CTAs and they have also chosen India in their CTAs for e.g. UAE, Japan, Australia, France, the Netherlands, Singapore, the U.K., etc. Thus, in respect of such countries, the MLI will be effective from the financial year 2020-21 with respect to withholding taxes as well as other taxes.

The PPT under the synthesised text of the India-UAE tax treaty is broader in scope than the General Anti-Avoidance Rule (GAAR) under the Income-tax Act, 1961 as the provisions of GAAR applies only if the 'main purpose' of the arrangement is to obtain a tax benefit whereas the PPT may apply if obtaining a benefit of the tax treaty was 'one of the principal purposes'. GAAR provides threshold for its applicability which is absent in PPT. Further the LOB clause does not provide grandfathering provision like GAAR.

-----

<sup>1</sup>The second sentence of paragraph 1 of Article 27(1) of the India-UAE tax treaty

As per the existing tax treaty, MAP must be presented within two years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the tax treaty. Under the new Article, it can be presented within three years.

The transactions/arrangements between the UAE and Indian entities need to be relooked at and appropriate steps should be taken to avoid tax litigations.

#### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071.  
Tel: +91 80 3980 6000

#### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

#### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

#### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

#### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

#### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

#### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

#### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

#### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

#### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000