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TAX FLASH NEWS

7 July 2017

Mauritius signs the Multilateral Convention

On 5 July 2017, Mauritius signed the Multilateral Convention (MLI or the Convention) to implement tax treaty related measures to Prevent Base Erosion and Profit Shifting (BEPS).

BEPS refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. MLI allows jurisdictions to ensure results of the OECD/G20 BEPS Project, including minimum standards to implement in tax treaties to prevent treaty abuse and 'treaty shopping', into their existing network of bilateral tax treaties in a quick and efficient manner.

Currently, the MLI in the Mauritian context, covers 23[1] of the existing tax treaties of Mauritius. For the remaining tax treaties, Mauritius will discuss bilaterally with the respective treaty partners in order to implement BEPS minimum standards at latest by end of 2018.

Key aspects of the amendments proposed by Mauritius through the MLI are discussed as follows:

Transparent entities, Dual Resident Entities and Application of the methods of elimination of double taxation

With regards to the applicability of the provisions relating to transparent entities, dual resident entities and the application of the methods of elimination of double taxation, Mauritius has reserved its right, thereby resulting into non applicability of the aforesaid provisions to any of the Covered Tax Agreements (CTA's) notified by Mauritius.

Prevention of treaty abuse

Mauritius has opted to include the preamble text in the case of certain countries which would be incorporated in the tax treaties that are covered under CTAs. The inclusion of the Preamble text would now depend on the acceptance or otherwise of the text by the corresponding countries'.

Mauritius has, amongst other things, agreed to adopt the Principal Purpose Test (PPT) clause alone as an interim measure. It has also been stated that Mauritius intends, where possible, to adopt a limitation of benefits provision (LOB), in replacement of the aforesaid clause, through bilateral negotiation.

Certain articles where Mauritius has reserved the right for the non-applicability of the CTA

In case of the following articles, Mauritius has reserved the right for its non-applicability. Thus, the same will not be applicable in case of any of the tax treaty that Mauritius has notified under the CTA.

- *Dividend Transfer Transactions*
- *Capital Gains from alienation of shares or interests of entities*
- *Anti-abuse Rule for Permanent Establishments situated in third jurisdictions*
- *Application of tax agreements to restrict a party's right to tax its own residents*
- *Artificial avoidance of Permanent Establishment status through Commissionaire Arrangements and similar strategies*
- *Artificial avoidance of Permanent Establishment status through the Specific Activity Exemptions,*
- *Splitting-up of contracts*
- *Definition of a person closely related to an Enterprise*

[1] Barbados, Belgium, Congo, Croatia, Cyprus, France, Germany, Guernsey, Italy, Kuwait, Kingdom of Lesotho, Luxembourg, Madagascar, Republic of Malta, Monaco, Oman, Qatar, Seychelles, South Africa, Swaziland, Sweden, UAE and the UK.

Our comments

In line with the earlier commitment made on 7 June 2017, Mauritius has finally committed itself to address the BEPS strategies by inking the MLI. Based on the provisional list, 23 tax treaties would be impacted by signing of the MLI by Mauritius which would help combat the tax avoidance strategies adopted by multinational entities.

Mauritius has kept India out of the MLI indicating that the tax treaty related BEPS measures will not impact investments in India routed through Mauritius, particularly the grandfathering of investments provided through the amendment to the bilateral tax treaty. In spite of the work on MLI being carried out since May 2015, the amendment to the bilateral tax treaty between India and Mauritius in May 2016 only acted as a precursor to indicate that Mauritius would not include India in the provisional list to address the concerns of the overriding impact of the MLI over the bilateral tax treaty which has now only been reiterated.

As of now the applicability of the LOB article, the grandfathering of investments made up to March 2017, etc., would be applicable and hope that the status quo remains until the final lists are submitted to the OECD for ratification.

Though Mauritius has in its' Press Release stated that for the remaining tax treaties that will not be covered by the MLI, it will discuss bilaterally with the respective treaty partners in order to implement BEPS minimum standards at latest by end of 2018. This number of provisional tax treaties notified could witness change till the time the final list is submitted to the OECD for ratification. It would also be interesting to see how Mauritius adopts the LOB provisions through the bilateral negotiation particularly while it is also desirous to maintain its status vis-à-vis its economic relations with those treaty partners.

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