KPMG

#KPMG josh

TAX FLASH NEWS

13 June 2019

The Union Cabinet approves ratification of MLI

In October 2015, the Organisation for Economic Co-operation and Development (OECD) released Base Erosion and Profit Shifting (BEPS) final reports on the 15 Action Plans. To enable jurisdictions to swiftly implement the BEPS recommendations, on 24 November 2016, the OECD released the text of the Multilateral Convention (MLI/Convention) to implement tax treaty related measures to prevent BEPS. The MLI was developed and agreed by approximately 100 jurisdictions, including OECD member countries, G20 countries and other developed and developing countries.

India, amongst 67 countries, has signed the MLI in Paris on 7 June 2017. The Convention enables all signatories, inter alia, to meet treaty related minimum standards that were agreed as a part of the Final BEPS package. 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 (CTA). Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

The provisional MLI position of each signatory indicates the tax treaties it intends to cover, the options it has chosen and the reservations it has made. Signatories can amend their MLI positions until ratification. Even after ratification, parties can choose to opt in with respect to optional provisions or to withdraw reservations. The salient features of MLI are as follows:

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

PIB release

Recently, the Government of India has issued a press release[1] stating that the Union Cabinet, chaired by the Prime Minister, has approved the ratification of the MLI to implement tax treaty related measures to prevent BEPS. The Convention will modify India's treaties in order to curb revenue loss through treaty abuse and BEPS strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

[1] PIB release, dated 12 June 2019

The Cabinet note seeking ratification of the MLI was sent to the Cabinet on 16 April 2019 for consideration. Since the said note for Cabinet could not be taken up in the Cabinet, due to urgency, the Prime Minister[2] 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 President of India[3]. Ratification of the MLI will enable application of BEPS outcomes through modification of existing tax treaties of India in a swift manner.

Our comments

The ratification of the MLI to implement tax treaty related measures to prevent BEPS is a welcome step. It is an innovative mechanism to update the network of several bilateral tax treaties that make up the international tax system. It aims to reduce opportunities for multinationals to avoid the taxes by adopting BEPS measures.

While signing the MLI, India had chosen to apply the simplified limitation of benefits (LOB) along with the mandatory minimum standard of the Principal Purpose Test (PPT) to counter treaty abuse. India had also adopted the minimum standards prescribed under dispute resolution through Mutual Agreement Procedure (MAP). India had indicated that it will not apply Article dealing with fiscally transparent entities to any of its CTAs. Further India had not chosen for mandatory arbitration. It would be interesting to analyse the modifications (if any) are made by the Government while ratifying the MLI.

Global experience

Sr. No.	Country	MLI implementation
1	***Austria***	In March 2019, the Austrian Ministry of Finance published the newer version of the Austria-France tax treaty displaying the modifications made to the treaty by the MLI. It reflects the options and reservations chosen by both Austria and France and shows how the treaty should be impacted by the MLI. The MLI entered into force for Austria on 1 July 2018 and for France on 1 January 2019.
2	***Japan***	On 1 January 2019, the MLI entered into force for Japan. Following the deposit of the instrument of ratification by Finland on 25 February 2019, the MLI will have effect on the tax treaty between Japan and Finland. The tax treaty with Finland is the 11th tax treaty for Japan to which the MLI will apply (the other 10 tax treaties are the Japanese tax treaties with Australia, France, Ireland, Israel, New Zealand, Poland, Singapore, Slovakia, Sweden and the UK).
3	***Poland***	On 6 February 2019, the Polish Ministry of Finance published the newer texts of the Australia-Poland tax treaty, displaying the modifications made to the treaty by the MLI. The MLI entered into force for Poland on 1 July 2018 and for Australia on 1 January 2019.
4	***Slovenia***	On 15 March 2019, the Slovenian Ministry of Finance published the newer texts of the Slovenian tax treaties with France, Israel, Lithuania and Slovak Republic as modified by the MLI. The texts reflect the agreement reached between the relevant authorities of the correspondent country and Slovenia on how the treaties should be impacted by the MLI.

However, it is important to note that significant jurisdictions such as the United States, Brazil, etc. have not signed the MLI. Furthermore, significant treaty partners that account for a substantial amount of investments into India, such as Germany, while having signed the MLI, have not notified its treaty with India in its provisional list of CTA.

[2] vide Cabinet Secretariat I.D. No. 216/1/2/2019-Cab, dated 27 May 2019
[3] vide this office OM F. No. 500/71/2015-FTDI/ 150, dated 31 May 2019

home.kpmg/in

Ahmedabad
Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Prahlad 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