

SATURDAY INTERNATIONAL TAX GYAN !!!

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Status Update on Applicability of MLI in India.

Base Erosion and Profit Shifting ('BEPS') refers to tax avoidance techniques used by Multi National Enterprises ('MNE') to artificially shift profits to low/nil tax jurisdictions. With increase in service portion of economy and rise of value of Intangibles, there has been substantial increase in such tactics by MNEs. The current set of rules/laws of various states and their bilateral treaties, were based on obsolete system designed for manufacturing and physical bases. However, technological changes have made it easier to shift bases to low/nil tax jurisdiction thereby depletion of tax base of a country.

Therefore, the Organization for Economic Co-operation and Development ('OECD') worked on a 15 BEPS Action plans to curb MNEs tax avoidance strategies and aggressive tax planning. These action plan could have bought by changes in various bilateral treaties between various countries leading to a changes in more than 3,000 treaties. Considering the time and resources to be taken to change those treaties, BEPS Action plan 15 implemented a radical reform in Tax treaties which would change many treaties by one stroke – i.e, a Multilateral Instrument ('MLI').

India deposited the ratified document along with a list of its Reservations and Options on 25th June, 2019. Article 34(2) of the MLI provides that the MLI shall enter into force for a signatory on the first day of the month following the expiration of a period of three calendar months from the date of deposit of the ratified instrument. Therefore, in the Indian context, the MLI entered into force on 1st October, 2019.

Status of MLI as on 30.07.2022 , with all the countries with which India has Double Taxation Avoidance Agreement is as under :

Sr.no	COUNTRY	MLI Applicability Status	Sr.no	COUNTRY	MLI Applicability Status
1	Albania	Applicable	47	Mauritius	MLI Signed but Treaty Not Listed
2	Armenia	Provisional	48	Mexico	Provisional
3	Australia	Applicable	49	Mongolia	MLI Not Signed
4	Austria	Applicable	50	Montenegro	MLI Not Signed
5	Bangladesh	MLI Not Signed	51	Morocco	Provisional
6	Belarus	MLI Not Signed	52	Mozambique	MLI Not Signed
7	Belgium	Applicable	53	Myanmar	MLI Not Signed
8	Bhutan	MLI Not Signed	54	Namibia	Provisional
9	Botswana	MLI Not Signed	55	Nepal	MLI Not Signed
10	Brazil	MLI Not Signed	56	Netherlands	Applicable

11	Bulgaria	Provisional	57	New Zealand	Applicable
12	Canada	Applicable	58	North Macedonia	Provisional
13	Colombia	Provisional	59	Norway	Applicable
14	Croatia	Applicable	60	Oman	MLI Signed but Treaty Not Listed
15	Cyprus	Applicable	61	Philippines	MLI Not Signed
16	Czech Republic	Applicable	62	Poland	Applicable
17	Denmark	Applicable	63	Portugal	Applicable
18	Egypt	Applicable	64	Qatar	Applicable
19	Estonia	Applicable	65	Romania	Applicable
20	Ethiopia	MLI Not Signed	66	Russian Federation	Applicable
21	Fiji	Provisional	67	Saudi Arabia	Applicable
22	Finland	Applicable	68	Serbia	Applicable
23	France	Applicable	69	Singapore	Applicable
24	Georgia	Applicable	70	Slovak Republic	Applicable
25	Germany	MLI Signed but Treaty Not Listed	71	Slovenia	Applicable
26	Greece	Applicable	72	South Africa	Provisional
27	Hong Kong (China)	Applicable	73	Spain	Applicable
28	Hungary	Applicable	74	Sri Lanka	MLI Not Signed
29	Iceland	Applicable	75	Sudan	MLI Not Signed
30	Indonesia	Applicable	76	Sweden	Applicable
31	Ireland	Applicable	77	Switzerland	MLI Signed but Treaty Not Listed
32	Israel	Applicable	78	Syria	MLI Not Signed
33	Italy	Provisional	79	Tajikistan	MLI Not Signed
34	Japan	Applicable	80	Tanzania	MLI Not Signed
35	Jordan	Applicable	81	Thailand	Applicable
36	Kazakhstan	Applicable	82	Trinidad & Tobago	MLI Not Signed
37	Kenya	Provisional	83	Turkey	Provisional
38	Korea	Applicable	84	Turkmenistan	MLI Not Signed
39	Kuwait	Provisional	85	Uganda	MLI Not Signed
40	Kyrgyzstan	MLI Not Signed	86	Ukraine	Applicable
41	Latvia	Applicable	87	United Arab Emirates	Applicable
42	Libya	MLI Not Signed	88	United Kingdom	Applicable
43	Lithuania	Applicable	89	Uruguay	Applicable
44	Luxembourg	Applicable	90	USA	MLI Not Signed
45	Malaysia	Applicable	91	Uzbekistan	MLI Not Signed
46	Malta	Applicable	92	Vietnam	Provisional
			93	Zambia	MLI Not Signed

Synthesized texts, of MLI read with some of the DTAA's have been hosted on Indian Income Tax website. However, it is to be noted that these are just for guidance purpose and for all legal purposes, the provisions of the MLI needs to must be read alongside CTA.

As of 30.07.2022, India has synthesized texts in respect of tax treaties with the following jurisdictions:

SYNTHESISED TEXTS					
S. No.	Country	S. No.	Country	S. No.	Country
1	Australia	11	Hungary	21	Poland
2	Austria	12	Iceland	22	Portuguese Republic
3	Belgium	13	Ireland	23	Russia
4	Canada	14	Japan	24	Serbia
5	Cyprus	15	Latvia	25	Singapore
6	Czech Republic	16	Lithuania	26	Slovak Republic
7	Estonia	17	Luxembourg	27	Slovenia
8	Finland	18	Malta	28	UAE
9	France	19	Netherlands	29	UK
10	Georgia	20	Norway	30	Ukraine

With the acceptance of MLI between the countries it is important to note that MLI, wherever applicable, should be referred while deciding about taxation impact on transaction between two countries.

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Thank you