

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No.

140

MLI For Beginners PART- 4

India's Position on MLI

**Tapu ke Papa,
I have learnt the basics of MLI
through the earlier series of MLI
but
what is **India's position on MLI.**
Which articles have India opted and
on which reservations are made?**



Daya Ben

Jain Shrimal & Co.

**Happy to hear that even after
so much work you read it!
Thanks for recognizing my work.
Now let's discuss
Article wise
India's Position on MLI**



Jethalal

Article No.	Article	India's final position
Article 3	Transparent entities	India has expressed reservation and has not opted for in its entirety. Thus, shall not apply to any of Indian CTAs.
Article 4	Dual resident entities	India has applied the provisions of Article 4(1) of MLI entirely and it shall apply to all CTAs (unless reservation is made by other CJ to CTA)
Article 5	Application of methods to eliminate double taxation	India has chosen Option C (i.e., Ordinary Credit Method) ; i.e. it shall apply to all its CTAs for its own residents and has not made any reservations.
Article 6	Purpose of CTA (minimum standard)	Indian has neither expressed any reservations nor made any notifications. Therefore, it shall apply to all its CTAs.
Article 7	Prevention of treaty abuse (minimum standard)	India has opted for PPT + SLOB and has also notified Depository. PPT being minimum standard, it will apply to all its CTAs.

Article No.	Article	India's final position
Article 8	Dividend transfer transactions	India has not expressed any reservations and made notification of list of CTAs, therefore it shall apply to all CTAs (except in case of India-Portugal tax treaty, which already contains similar provision)
Article 9	Capital gains from alienation of shares or interest of entities deriving their value principally from immovable property	India has opted to apply minimum holding period threshold along with minimum value derivation criterion of 50 percent. The said provision shall apply to CTA only if other CJ to CTA has chosen to apply the said provision.
Article 10	Anti-abuse rule for PE in third jurisdiction	India has neither expressed reservation nor made any notifications and choose to remain silent on its position; it shall apply to all its CTA (unless reservation is made by other CJ to CTA)
Article 11	Application of tax agreement to restrict a party's right to tax its own residents	India has neither expressed reservation nor made any notifications and choose to remain silent on its position; it shall apply to all its CTA (unless reservation is made by other CJ to CTA)

Article No.	Article	India's final position
Article 12	Artificial avoidance of PE status through commissionaire and similar strategies	India has not expressed any reservations and notified list of CTAs, therefore it shall apply to all CTAs. (unless reservation is made by other CJ to CTA)
Article 13	Artificial avoidance of PE through specific activity exemptions	India has chosen to apply Option A ; it shall apply to CTA only if CJ to CTA has chosen same option India has chosen to apply anti-fragmentation rule ; it shall apply to CTA only if CJ to CTA has chosen to apply the provision.
Article 14	Splitting up of contracts	India has neither expressed reservation nor made any notifications and choose to remain silent on its position; it shall apply to all its CTA (unless reservation is made by other CJ to CTA)
Article 15	Definition of a person "closely related to an enterprise"	India has neither expressed reservation nor made any notifications and choose to remain silent on its position; it shall apply to all its CTA (unless reservation is made by other CJ to CTA)

Article No.	Article	India's final position
Article 16	Mutual agreement procedure	India has reserved its right for not adopting the modified MLI provisions on the basis that it will meet the minimum standard by allowing MAP access in the resident state and implementing bilateral notification or consultation process
Article 17	Corresponding adjustments	India has chosen to apply the said provision except for CTAs where the provisions already exist Bilateral APA and MAP allowed even in absence of Article 9(2) – clarified by CBDT vide press release dated 27 th Nov., 2017.
Article 18-26	Mandatory binding arbitration	India has not opted for mandatory arbitration
Article 35	Entry into effect	India has chosen to substitute “calendar year” with “taxable period” If other CTA partner opts for calendar year, date of applicability of MLI provision for such other CTA partner will differ via-a-vis as for India

Jetha Ji ,
You have discussed about India's
Position on MLI (Article Wise)
but
what about country wise
i.e whether India has entered
into MLI or not
with various countries



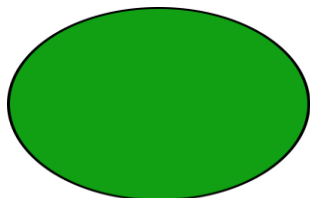
Babita Ji

Babita Ji,
Good Question
Let's Go on a World tour and
discuss
India's Position on MLI
(Country wise)



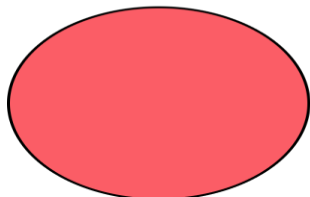
Jethalal

General terms



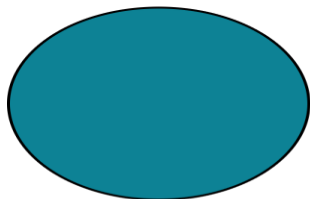
Applicable:

Both the countries deposited ratified copy and listed each other in their list of MLI



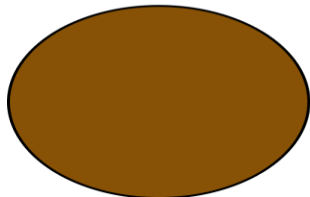
MLI Not Signed:

Country is not signatory to MLI



MLI Signed but Treaty Not Listed:

Country signed MLI but not listed India in their List of MLI



Provisional:

India notified the other country but other country not deposited ratified copy of MLI to OECD

Sr.no	COUNTRY	MLI Applicability Status
1	Albania	Applicable
2	Armenia	Provisional
3	Australia	Applicable
4	Austria	Applicable
5	Bangladesh	MLI Not Signed
6	Belarus	MLI Not Signed
7	Belgium	Applicable
8	Bhutan	MLI Not Signed
9	Botswana	MLI Not Signed
10	Brazil	MLI Not Signed
11	Bulgaria	Provisional
12	Canada	Applicable
13	Colombia	Provisional
14	Croatia	Applicable
15	Cyprus	Applicable

Sr.no	COUNTRY	MLI Applicability Status
16	Czech Republic	Applicable
17	Denmark	Applicable
18	Egypt	Applicable
19	Estonia	Applicable
20	Ethiopia	MLI Not Signed
21	Fiji	Provisional
22	Finland	Applicable
23	France	Applicable
24	Georgia	Applicable
25	Germany	MLI Signed but Treaty Not Listed
26	Greece	Applicable
27	Hong Kong (China)	Applicable
28	Hungary	Applicable
29	Iceland	Applicable
30	Indonesia	Applicable

Sr.no	COUNTRY	MLI Applicability Status
31	Ireland	Applicable
32	Israel	Applicable
33	Italy	Provisional
34	Japan	Applicable
35	Jordan	Applicable
36	Kazakhstan	Applicable
37	Kenya	Provisional
38	Korea	Applicable
39	Kuwait	Provisional
40	Kyrgyzstan	MLI Not Signed
41	Latvia	Applicable
42	Libya	MLI Not Signed
43	Lithuania	Applicable
44	Luxembourg	Applicable
45	Malaysia	Applicable

Sr.no	COUNTRY	MLI Applicability Status
46	Malta	Applicable
47	Mauritius	MLI Signed but Treaty Not Listed
48	Mexico	Provisional
49	Mongolia	MLI Not Signed
50	Montenegro	MLI Not Signed
51	Morocco	Provisional
52	Mozambique	MLI Not Signed
53	Myanmar	MLI Not Signed
54	Namibia	Provisional
55	Nepal	MLI Not Signed
56	Netherlands	Applicable
57	New Zealand	Applicable
58	North Macedonia	Provisional
59	Norway	Applicable
60	Oman	MLI Signed but Treaty Not Listed

Sr.no	COUNTRY	MLI Applicability Status
61	Philippines	MLI Not Signed
62	Poland	Applicable
63	Portugal	Applicable
64	Qatar	Applicable
65	Romania	Applicable
66	Russian Federation	Applicable
67	Saudi Arabia	Applicable
68	Serbia	Applicable
69	Singapore	Applicable
70	Slovak Republic	Applicable
71	Slovenia	Applicable
72	South Africa	Provisional
73	Spain	Applicable
74	Sri Lanka	MLI Not Signed
75	Sudan	MLI Not Signed
76	Sweden	Applicable
77	Switzerland	MLI Signed but Treaty Not Listed

Sr.no	COUNTRY	MLI Applicability Status
78	Syria	MLI Not Signed
79	Tajikistan	MLI Not Signed
80	Tanzania	MLI Not Signed
81	Thailand	Applicable
82	Trinidad & Tobago	MLI Not Signed
83	Turkey	Provisional
84	Turkmenistan	MLI Not Signed
85	Uganda	MLI Not Signed
86	Ukraine	Applicable
87	United Arab Emirates	Applicable
88	United Kingdom	Applicable
89	Uruguay	Applicable
90	USA	MLI Not Signed
91	Uzbekistan	MLI Not Signed
92	Vietnam	Provisional
93	Zambia	MLI Not Signed

Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss howsoever sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.