

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

MLI For Beginners PART- 3



SITG No.
139

Structure and Framework of MLI

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**How to determine applicability of
MLI provision to tax treaty ?**

Let's understand MLI through a small conversation between a Mother and a Child which occurs in Indian Household



Did not understand anything wait.....



1. Minimum Standards

- Minimum standards are bare minimum recommendations of the OECD and BEPS Project.
- Mandatorily needs to be adopted by the signatories to MLI (**except in Limited cases**)



Minimum Standards are Mandatorily to adopt if any Country wants to adopts MLI just like a Glass of Milk

Example of Minimum Standards are Article 6: Purpose of the CTA and Article 7: Prevention of Treaty abuse

Point to Remember

Case when we can opt out of Minimum Standard?

We can opt out only in limited
Circumstances where:

- a) Existing CTA already have adequate provision similar to minimum standard**
- or
- b) When it is willing to negotiate a comparable provision with treaty partner on a bilateral basis**



2. Reservations

Flexibility to opt out of a provision if it is not a minimum standard.

**List to be submitted to
Depositary:**

**Provisional List – At
the time of Signing
the MLI**

**Final List- While
filling the ratified
Copy of MLI**

**Reservations can be withdrawn or replaced at any time by
notifying depositary**

**No other reservation can be made except which are specified in
MLI Article.**

**If a country choose to reserve an entire MLI article, such shall
apply to all the tax treaties notified. Thus, Reservation is qua each
article and not qua country**

Example of Reservation



Reservations are like sweets, you can choose to opt out if you don't want to apply the same.

3. Optional Provisions

- **Option to choose amongst the various alternatives provided in certain provisions and clauses of MLI**
- **Any option apply to any CTA only in case when both the parties had selected same option.**
- **If both parties choses different options none of the option will apply to relevant CTA.**
- **Selected option operates qua all the countries.**



Example of Optional Provision



Optional provision are similar as Karela and Paneer you can choose among the various options available.

Compatibility Clauses

Defines the relationship between the MLI and the provisions of a CTA.



MLI provision applies

In place of

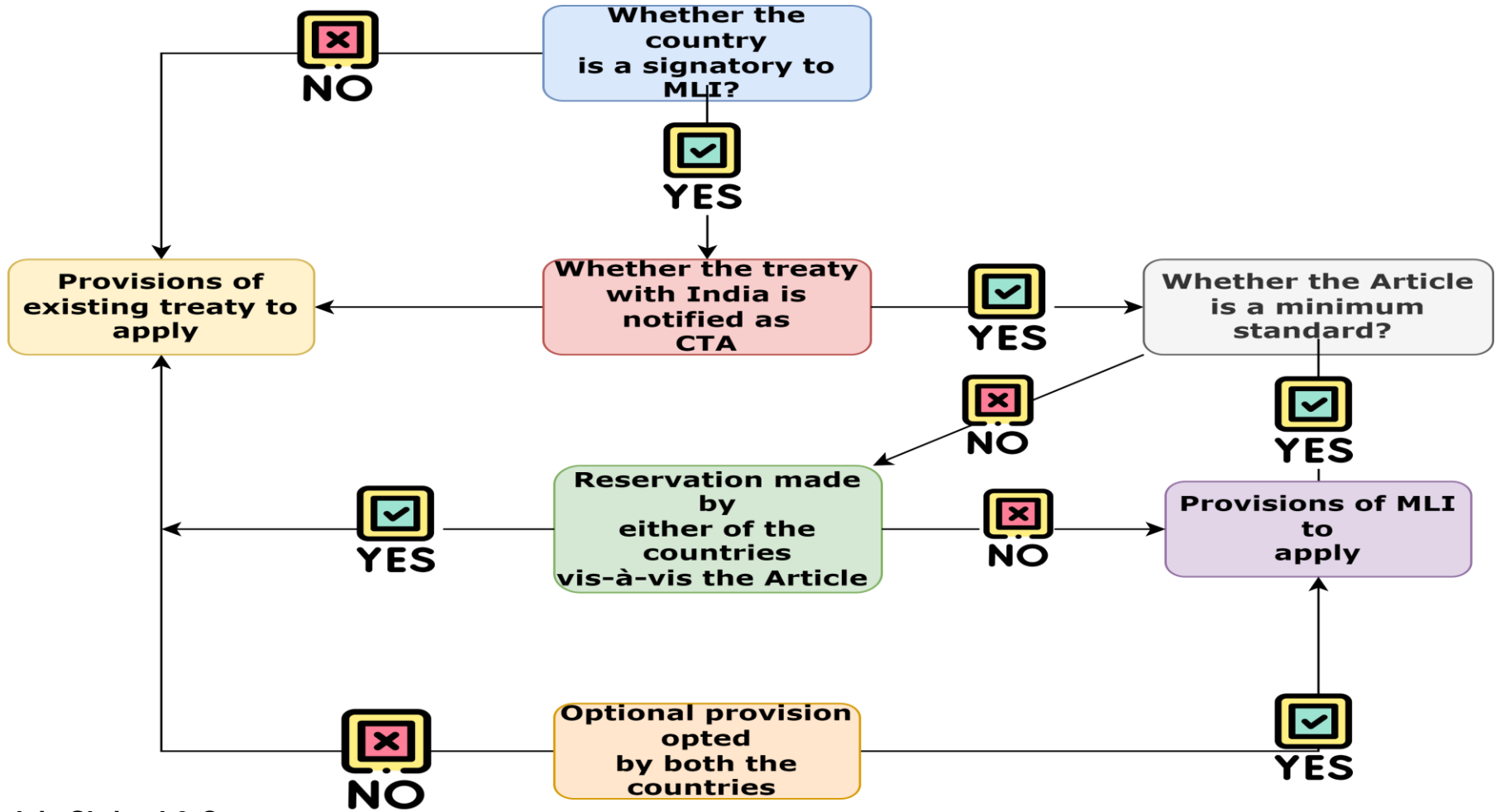
**Applies to or
modifies**

In the absence of

**In place of or in the
absence of**

Types of Compatibility Clause	When applicable	Effect
In place of	There is an existing provision in the CTA	Existing CTA provision is replaced
Applies to or Modifies		Application of an existing provision is amended without replacing it
In absence of	The provision is absent in the CTA	The provision is added to the CTA
In place of or In absence of	The provision is present or absent in the CTA	The existing provision is replaced / superseded or MLI provision is added to CTA (in absence of existing provision)

How to determine applicability of MLI provision to tax treaty ?



Documents can be referred for Interpretation of MLI

Basic Documents:

- BEPS Action Plan 15
- Explanatory Statement to MLI
- MLI Positions adopted and deposited by Various MLI signatories with OECD
- Report on BEPS Action Plan 2,6,7,14
- Existing tax treaty
- OECD Model Convention of Tax treaty and OECD Commentaries
- Synthesized text of MLI between parties to CTA

Other Documents available on OECD website:

- List of Signatories and parties to MLI
- Frequently Asked Questions (FAQs) on MLI
- Flow chart on matching of reservations and notifications of MLI
- Legal note on functioning on MLI under public international law
- Step by step on applying the MLI
- MLI Matching Database

Link of OECD Website: <https://www.oecd.org/>

Reference of Previous SITG of MLI for beginners Series

S.NO	Particulars	Link
1	Basic (BEPS)	<u>Click here</u>
2.	Introduction to MLI	<u>Click Here</u>

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