

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

MLI For Beginners PART- 9



**SITG
No.
145**

ARTICLE – 7 Incorporation of Strict Anti-Treaty abuse Rules (Part-II)

Date : 18.03.2023

TOPICS COVERED IN PART-I

1

Principal purpose test (PPT)& SLOB

2

Steps for evaluation of PPT

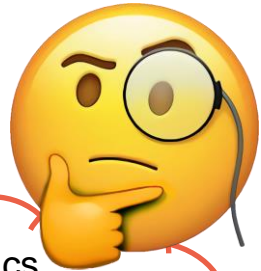
3

Reasonable purpose Test

4

Object & purpose Test

[LINK for PART-I \(Click here\)](#)



Remaining topics related to Article 7 are covered in this part and discussion on **GAAR and PPT will be done in next SITG.**

Discretionary Relief

1. Definition of PPT widens the scope by including such benefit as may be received by an entity directly **and indirectly**” and mentions that the same would be covered under the PPT. Therefore, even when the entity does not derive the benefit from a particular transaction directly but is indirectly benefited may get covered

3. So one of the provisions of the MLI offers an option to countries to opt in their CTA that a **competent authority (CA)** of a jurisdiction may be able to **grant treaty benefit** in **appropriate circumstances**, even if PPT not fulfilled.

2. Where a person has been **denied the tax benefit** on grounds that one of the **principal purpose** of any arrangement or transaction was to obtain **tax benefits**, the competent authority (CA), upon request from that person and after considering the relevant facts, could make a determination whether the taxpayer could have been granted the tax benefits provided that person has not done any transaction or arrangement which would result in denial of benefits of treaty.

4. The **CA** of source country is likely to **consider favourable claim of taxpayer** rather than burdening on the taxpayer, either treaty benefit is allowed or rejected in respect of treaty benefit.

Application of Discretionary Relief

Mr. A



Own 5% Shares

Individual Resident
of state R

Company S



Resident of state S

Owens 11%
of Shares



Company R (Resident of State R)

The applicable tax rate for the company would be 15% on dividend income since it owns more than 10% of shares, and hence shares received from Mr. A will not impact the tax rate applicable on the company R



In the above case, even when the transfer of shares was not carried out between the individual and R Co., the latter would still have **received the benefit of tax treaty for the dividend received on shares already held by it**. Therefore, R Co. can apply to competent authority of State R to continue to provide the tax treaty benefit for the shares already held by it. And, hence Mr. A can transfer his right to receive dividend to Company R and it **will not be** bad in law.

Impact of absence of Discretionary Relief

1


PPT only makes reference to not granting benefit under a convention

PPT has an **absolute** effect of denial of treaty benefit on abusive transactions

2

3

Also, treaty provisions including PPT are treaty specific and does not permit reference to any other treaty unless agreed to in terms of MFN or some such comparable protocol.




What would be the **impact of PPT** on the payer when his arrangement is PPT tainted?



Impact of Tax withholding obligation under PPT

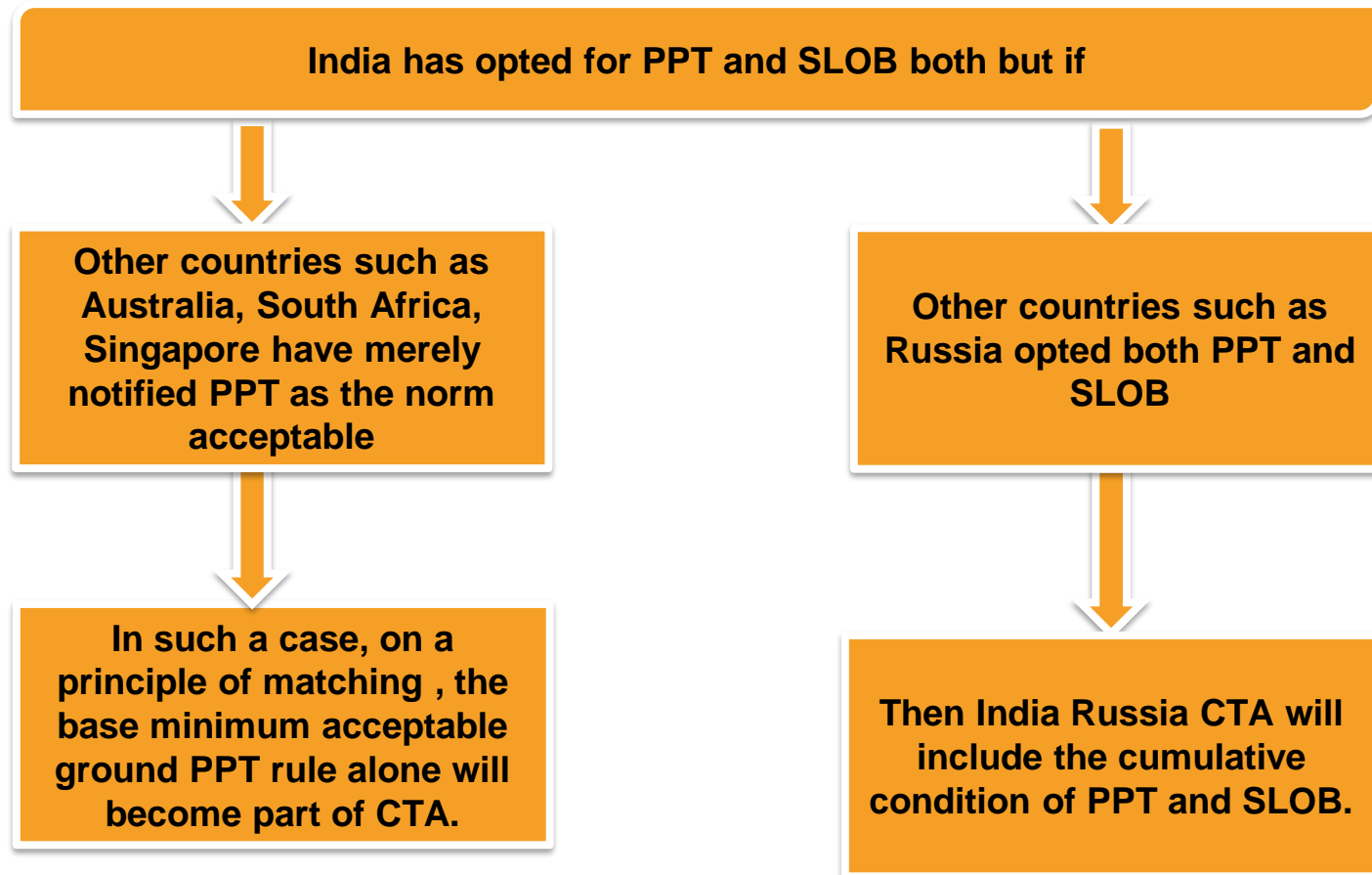
Whether a representative assessee is expected to take into account the impact of PPT while determining scope of his obligation particularly **when the taxpayer is not aware of the purpose of transaction?**



With regard to this, there is no provision in law. However, Shome Committee has provided for the following recommendation while dealing with the comparable issues in the context of GAAR. "While processing an application under section 195(2) or 197 of the Act pertaining to the withholding of taxes,

- (a) the taxpayer should submit a **satisfactory undertaking to pay tax along with interest** in case it is found that **GAAR provisions are applicable** in relation to remittance during the course of assessment proceedings; or
- (b) in case the taxpayer is **unwilling to submit a satisfactory undertaking** as mentioned in (a) above, the Assessing Officer should have the authority with the **prior approval of Commissioner**, to inform the taxpayer of his likely liability in case **GAAR is to be invoked** during assessment procedure."

India's Position



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> |
| 3. | Structure and Framework of MLI | <u>Click here</u> |
| 4. | India's position on MLI | <u>Click Here</u> |
| 5. | Dual Residency of Entities (Article 4) | <u>Click Here</u> |
| 6. | Application of Methods for Elimination of Double Taxation (Article 5) | <u>Click here</u> |
| 7. | Purpose of CTA (Minimum Standard) (Article 6) | <u>Click here</u> |
| 8. | Incorporation of Strict Anti-Treaty abuse Rules [Part-I] (Article 7) | <u>Click here</u> |

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