

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

MLI For Beginners PART- 13



ARTICLE – 10 Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

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Triangular cases

Gada Electronics
(Resident of Country A)



carries on business in
another contracting
state

Country B
Country of Source



Income arising from state of source i.e.
B is deliberately transferred with a PE
situated in third state (country C), where
there is no tax or low tax on income
arising

*exemption of income from
tax in the state of resident of
A on account of tax treaty
between A and C*

Natu kaka & Bagha
Country C



Companies evade tax in different countries by using triangular abuse as follows:

In country of resident

Exemption of the income from tax in the state of residence on account of tax treaty benefits between country of residence and PE country.

In Country of Source

No tax in source country, because the income is now effectively connected with or attributable to the PE situated in third party country, as the assets have been transferred there

In Country of PE:

No tax in the country of the PE (third-party country), since it is a low/NIL. tax jurisdiction

**Hello Pandey Ji,
Its a great way to save
tax everyone can use
this method to save
tax.
You can also try !**



**No No Mr. Ramani
Article 10
of MLI stops you
from
doing tax evasion**



**What is article 10 of
MLI.
How it stops
from tax evading**



Chandaramani

**Let's Discuss the
same
Stay Tuned**



Chalu Pandey

Anti-abuse Rules for PE's in third Jurisdiction

Paragraph 1 of Article 10 provides that, where an enterprise or Jurisdiction (Country of Residence) derives income from the other jurisdiction (Country of Source) **and**

Such income is treated as income attributable to a PE in a Third State (third jurisdiction) and such income is exempt from Tax in the country of residence, **then**

Tax treaty benefit **shall not apply** if the **tax payable** on the Attributable income **in the Third state** is **less than 60%** of the **Tax would have been charged on same income in residence state.**

In such a case, any income to which this provision apply shall remain taxable according to the domestic law of the country of source, notwithstanding any other provision of CTA.

Article
10(2)

Incomes excluded

The **provision shall not apply** if the income derived from the Country of source is derived in connection with or is incidental to the active conduct of a business carried on through the third jurisdiction PE.

Article
10(3)

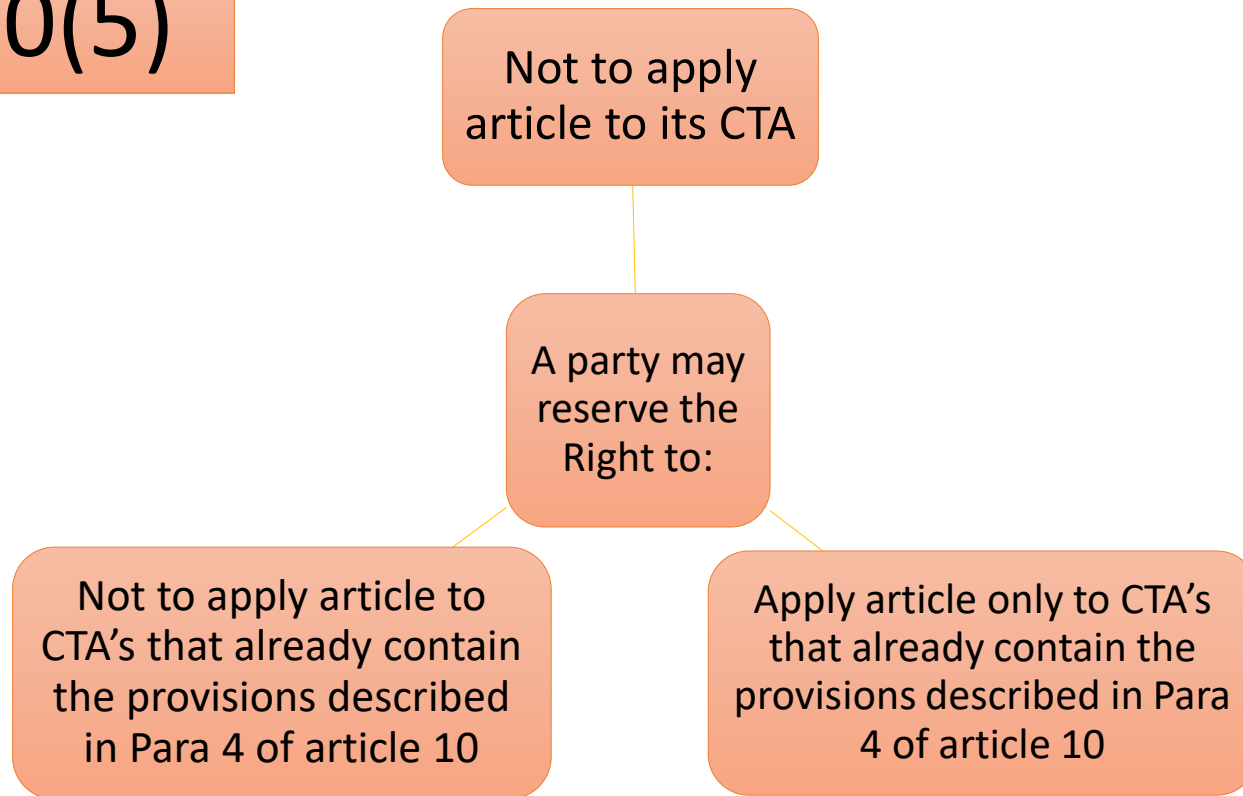
Right of Authorities

- If **benefits of CTA denied** on the basis of Para 1, then the competent authority of country of source may grant the benefits on request of person in country of residence.
- The **competent authority** of country of source shall consult with competent authority of country of residence before granting or denying the request.

Article
10(4)

Para 4 states that if a party opts for article 10, then such article will apply in place of already existing provisions of tax treaties or will be added in absence of such provisions in a tax treaties.

Article 10(5)



India's Position: India has not made any reservation / notifications as to the anti-abuse rule for Triangular PE cases, Article 10 of the MLI will be incorporated in the Indian tax treaties wherever the treaty partner has not made any such reservation / notifications.

Some examples of Impact on India's treaties

Sr	Countries	Existing DTAA	Options, Reservations and Notification by the Country	Impact on India's CTA with the Country
1	Cyprus	No existing provisions	Reserved the right under 5(a) for entirety of Article 10 to not to apply to its CTA	Article 10 would not apply
2	Singapore	No existing provisions	Reserved the right under 5(a) for entirety of Article 10 to not to apply to its CTA	Article 10 would not apply
3	UK	No existing provisions	Reserved the right under 5(a) for entirety of Article 10 to not to apply to its CTA	Article 10 would not apply
4	Netherlands	No existing provisions	Netherlands is silent on the applicability of this Article	India is silent on applicability of this Article. Thus, paragraph 1 to 3 of Article 10 will apply to CTA to the extent of incompatibility since it is "in place of" or "in absence of" criteria Article.
5	Japan	No existing provisions	Japan is silent on the applicability of this Article.	India is silent on applicability of this Article. Thus, paragraph 1 to 3 of Article 10 will apply to CTA to the extent of incompatibility since it is "in place of" or "in absence of" criteria Article.

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

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1.	Basic (BEPS)	Click here
2.	Introduction to MLI	Click Here
3.	Structure and Framework of MLI	Click here
4.	India's position on MLI	Click Here
5.	Dual Residency of Entities (Article 4)	Click Here
6.	Application of Methods for Elimination of Double Taxation (Article 5)	Click here
7.	Purpose of CTA (Minimum Standard) (Article 6)	Click here
8.	Incorporation of Strict Anti-Treaty abuse Rules [Part-I] (Article 7)	Click here
9.	Incorporation of strict Anti-Treaty abuse Rules [Part-II] (Article 7)	Click here
10.	GAAR v/s PPT [Part-III] (Article 7)	Click here
11.	Dividend Transfer Transaction (Article 8)	Click here
12	Capital gain from alienation of shares (Article 9)	Click here

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