

SATURDAY INTERNATIONAL TAX GYAN !!!

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MLI For Beginners PART- 12



ARTICLE – 9 Capital Gains from Alienation of Shares or Interests of Entities Deriving their value Principally from Immovable property

Date : 15.04.2023

**Jethalal,
I am selling Australian shares of
Champaklal INC and
from that I will purchase
electronic items from
GADA Electronics**



**Mohan Lal
(Non Resident)**

**Good news, but you know that you
have to pay tax in India if you
sell the same. As, Champaklal INC
owns Gada Electronics.
Champaklal INC deriving its major
value from GADA electronics**



Jethalal

Provisions of a CTA providing that gains derived from the alienation of shares or other rights of participation in an entity

May be taxed in jurisdiction in which the immovable property is situated provided the shares or right derive more than certain amount of value from such immovable property

Shall apply

Para (a)
If the relevant value threshold is met at any time during the 365 days preceding the alienation

OR

Para (b)
To shares or comparable interests, such as interest in a partnership or trust (in addition to shares or rights already covered)

The 365 day test shall apply in place of the existing testing periods in CTA or in the absence of such existing testing periods in CTA



9(3)

A party has an option to apply the value threshold of 50% as provided in para 4 or continue to apply the value threshold specified at present in CTA for the testing period.

9(4)

Para 4 of Article 9 of MLI provides a specific percentage, i.e., 50% for determination of value directly or indirectly from immovable property (real property) situated in the other contracting state. If the value determine directly or indirectly from immovable property is more than 50% then tax will be payable in such contracting state.

9(5)

Para 5 states that if a party opts for para 4, the same will apply in place of already existing provisions of CTA or in absence of such provisions of a CTA.

A party may have the following reservation rights

9(6)

Reservation Rights

Explanation of these Rights

For paragraph 1 not to apply to its CTA

For the entire BEPS Action Plan 6 proposed anti-abuse measures in this regard not to apply to its CTA

For sub-para (a) of para 1 not to apply to its CTA

For the testing period as per BEPS Action Plan 6 not to apply to its CTA while the extension of applicability to entities other than companies applies.

For sub-para (b) of para 1 not to apply to its CTA

For the extension of applicability to entities other than companies not to apply to its CTA while the testing period applies.

To be Continue..

For sub-para (a) of para 1 not to apply to its CTA that already contain a provision of the type described in paragraph 1 that includes a period for determining whether the relevant value threshold was met



For the testing period not to apply to its CTA that already contain a provision of the type described in the paragraph that includes a period for determining whether the relevant value threshold was met irrespective of whether the period is greater or lesser than 365 days

For subparagraph b) of paragraph 1 not to apply to its CTA that already contain a provision of the type described in paragraph 1 that applies to the alienation of interests other than shares



For the extension of applicability to entities other than companies not to apply to its CTA that already contain a provision of the type described in para 1 that applies to the alienation of interests other than shares

For paragraph 4 not to apply to its CTA that already contain the provisions described in paragraph 5



For the specified 50% for determination of value derived from an immovable property (real property) situated in the other contracting state not to apply where the CTA already contain the provisions described in para 5

India's Treaty Partners which have opted for Art 9 with NO Reservations

India's Positions

Countries	Reservation
Albania, Greece	Not expressed any reservations on Art 9. Not notified India under Art 9(7).
Kenya	Opted to apply Art 9(4). Pursuant to Art 9(8), Kenya considers CTA with India contain a provision described in Art 9(5).
<ul style="list-style-type: none"> • Armenia • Estonia • France • Indonesia • Kazakhstan • New Zealand • North Macedonia • Poland • Portugal • Spain • Denmark • Serbia • Slovak Republic • Ukraine • Uruguay 	Opted to apply Art 9(4). Pursuant to Art 9(7), these CJs consider CTA with India contain a provision described in Art 9(1).
<ul style="list-style-type: none"> • Egypt • Japan 	Opted to apply Art 9(4). Not notified India under Art 9(7) re Art 9(1).
<ul style="list-style-type: none"> • Fiji • Netherlands • Mexico 	Pursuant to Art 9(7) these CJs consider CTA with India contain a provision described in Art 9(1)
India	Opted to apply Art 9(4). Notified 71 CTAs as containing a provision described in Art 9(1).

India's Treaty Partners which have opted for Art 9 with Reservations

12 Countries	Reservation
Australia	Reserves the right under Art 9(6)(e), in respect of which India is not listed. However, in the list pursuant to Art 9(7) it considers specified agreements (including CTA with India) contain a provision described in Art 9(1).
Belgium	Reserves the right under Art 9(6)(b). Pursuant to Art 9(7) it considers specified agreements (including CTA with India) contain a provision described in Art 9(1).
Ireland	Reserves the right under Art 9(6)(e). Pursuant to Art 9(7) it considers specified agreements (including CTA with India) contain a provision described in Art 9(1).
Columbia	Pursuant to Art 9(8) it chooses to apply Art 9(4). Pursuant to Art 9(7) it considers specified agreements (including CTA with India) contain a provision described in Art 9(1).
Croatia	Reserves the right under Art 9(6)(a). Opted to apply Art 9(4). Pursuant to Art 9(8) it considers specified CTAs (including CTA with India) contain a provision described in Art 9(5).
Israel	Reserves the right under 9(6)(b). Pursuant to Art 9(8) it considers specified agreements (including CTA with India) contain a provision described in Art 9(5).
Italy	Reserves the right under Art 9(6)(a). Pursuant to Art 9(8) it considers specified agreements (including CTA with India) contain a provision described in Art 9(5).
Russia	Reserves the right under Art 9(6)(e). Pursuant to Art 9(8) it chooses to apply Art 9(4).

India's Treaty Partners which have opted for Art 9 with Reservations

Countries	Reservation
Slovenia	Reserves the right under Art 9(6)(e). Following agreements contain provisions within scope of this reservation Pursuant to Art 9(8) it chooses to apply Art 9(4) Pursuant to Art 9(7) it considers CTA with India contains a provision described in Art 9(1).
Turkey	Reserves the right under Art 9(6)(a) and Art 9(6)(f)
Canada	Reserves the right under Art 9(6)(e). Pursuant to Art 9(8) it chooses to apply Art 9(4) Pursuant to Art 9(7) it considers CTA contains a provision described in Art 9(1) for which India is not notified.
Malta	Reserves the right under 9(6)(a). Pursuant to Art 9(8) it chooses to apply Art 9(4) Pursuant to Art 9(8) it considers CTA contains a provision described in Art 9(5) for which India is not notified.

India's Treaty Partners which have opted out of Art 9 altogether

29 Countries					Reservation
• Austria	• Finland	• Hungary	• Liechtenstein	• Norway	Reserves the right under Art 9(6)(a). Have also not opted to apply Art 9(4). Hence the treaties of these 32 countries with India would not undergo any changes.
• Bulgaria	• Georgia	• Iceland	• Lithuania	• Qatar	
• Cyprus	• Hong Kong	• Korea	• Luxembourg	• Romania	
• Czech	• Sweden	(South)	• Malaysia	• Singapore	
• South Africa	• Switzerland	• Kuwait	• UAE	• UK	
	• Jordan	• Latvia	• Oman	• Saudi Arabia	
		• Morocco			

India's treaty partners who have not signed the MLI

28 Countries						
• Bangladesh	• Brazil	• Mongolia	• Myanmar	• Sri Lanka	• Thailand	• Uzbekistan
• Belarus	• Ethiopia	• Montenegro	• Namibia	• Sudan	• Trinidad	• Vietnam
• Bhutan	• Kyrgyz	• Mozambique	• Nepal	• Syria	• Turkmenistan	• Zambia
• Botswana	• Libya	• Tanzania	• Philippines	• Tajikistan	• Uganda	• USA

Countries that are signatories to the MLI but have not executed a DTAA with India

26 Countries

- Andorra
- Argentina
- Barbados
- Seychelles
- Belize
- Burkina Faso
- Cameroon
- Chile
- Costa Rica
- Curacao
- Bosnia and Herzegovina
- Gabon
- Guernsey
- Isle of Man
- Jamaica
- Jersey
- Tunisia
- Monaco
- Nigeria
- Pakistan
- Cote d'Ivoire
- Panama
- Papua New Guinea
- Peru
- San Marino
- Senegal

Countries that are signatories to the MLI but have not listed India

3 Countries

- Mauritius
- Germany
- China

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)	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

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