

SATURDAY INTERNATIONAL TAX GYAN !!!

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MLI For Beginners PART- 14



ARTICLE – 11

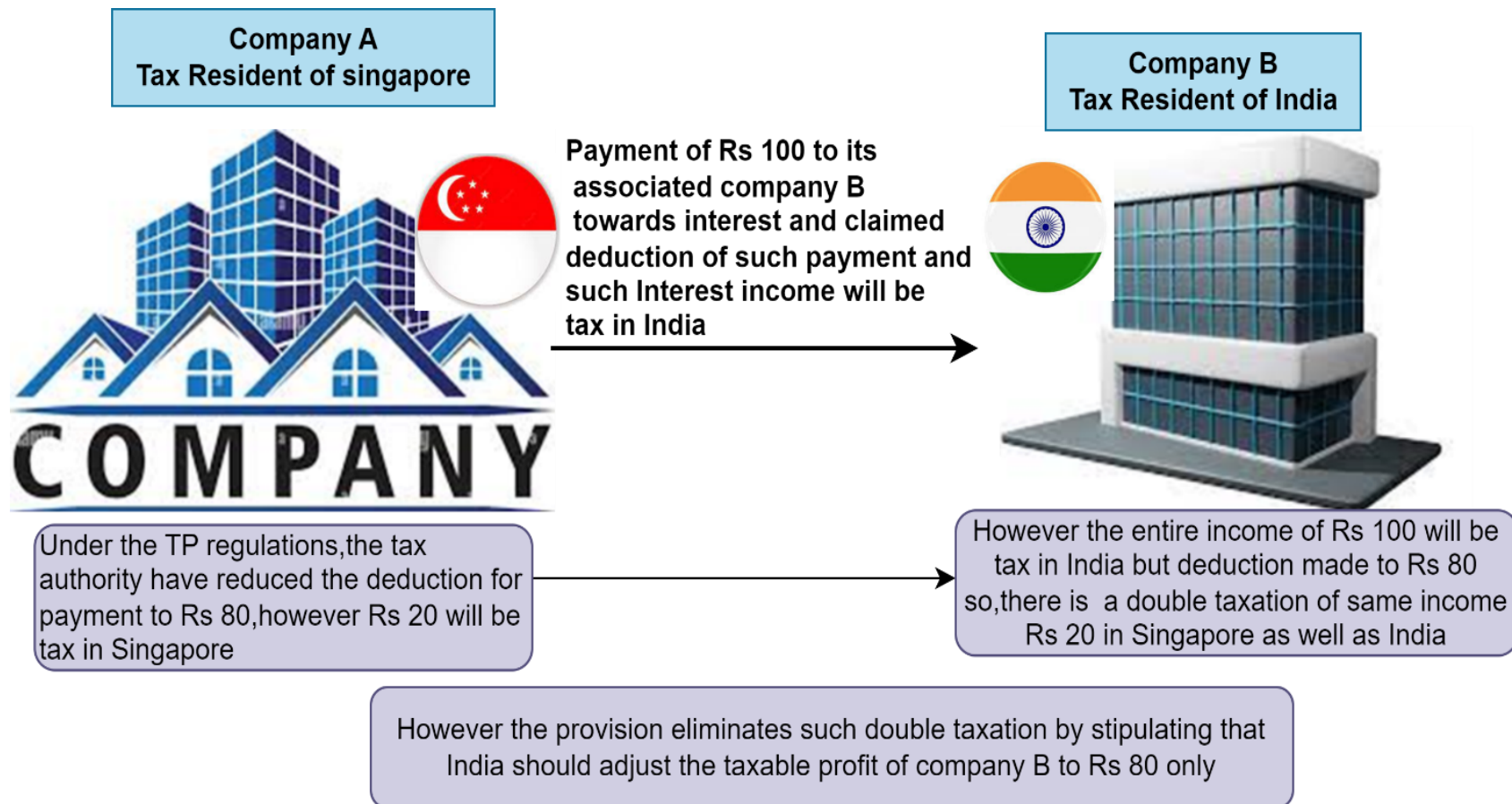
**Application of Tax Agreements to Restrict party's Right to Tax its own Residents
(Article 11 is read with exception to the saving clause)**

Date : 06.05.2023

Article 11 of the MLI introduce a saving clause. A saving clause preserve the right of a contracting state to tax its own resident as if no tax treaty existed

Saving Clause

Exceptions to saving clause



Article 11 of MLI provides that a tax treaty shall not affect taxation by contracting jurisdiction of its residents, except benefits granted under provisions of tax treaties such as:

a) Granting an enterprise a corresponding adjustment made by the other state on the profits of the PE or an associated enterprise. Let's understand with an example



b) Tax Treaty shall not affect the taxation by a contracting jurisdiction of its resident except an individual who is a resident of that jurisdiction and also a student, business apprentice or trainee or a teacher, professor, researcher who meet the conditions of CTA. Let's understand with an example

Tapu



Tapu was resident of India but as a student, trainee visits the country for the purpose of study then for the training period he becomes the resident of Singapore

**Resident Country
Singapore**



Tapu earn certain income from India then such an income not be taxable in the Singapore



If a teacher, research scholar or similar person visits the resident country for a period up to two years, any payment of fees to such a teacher would not be taxable in the resident country

Miscellaneous Exception's

c)

Provisions of tax credit or exemption to its own residents with respect to income that the other contracting state may tax in accordance with tax treaty

Any other provision in specific tax treaty which provides exclusive right to tax a person only in the source country not in the resident country

g)

d)

Allowance of its residents to request competent authority of own state or other state to consider cases of taxation in accordance with tax treaty

Provision of taxation of pension , annuities, alimony or other payments arising in other contracting state shall be taxable only in other contracting state

h)

e)

Protection of its resident against certain discriminatory taxation policies, every tax treaty has a non-discrimination clause which provides that country not discriminate to tax a person based on nationality or other factor

Provisions of taxation of pensions or other payment under social security agreement would only be taxable in such source country not taxable in resident country

i)

f)

Contracting jurisdiction taxes an individual(member of a diplomatic mission, government mission or consultant post) who is resident of that jurisdiction

Reservation Clause

A party may reserve the right:

For entirety of this Article not to apply to its CTA

For entirety of this Article not to apply to its CTA which already have the similar provisions



India's Position

India is silent on this Article i.e. neither opted for any notification nor placed any reservation of Article 11. Therefore, Article 11 would supersede the Indian tax treaties if other country to the tax treaty has not reserved the right to not apply such provisions.

Most of the Indian tax treaty do not have provisions of Article 11. Majority of the countries which has trade relations with India such as Singapore, Netherlands, Japan, France have reserved their right to not apply provisions of Article 11.

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
12	Capital gain from alienation of shares (Article 9)	Click here
13	Anti-abuse Rule for PEs in Third Jurisdiction (Article 10)	Click here

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