

SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No.
155

MLI For Beginners PART- 17

ARTICLE – 14 (Splitting-up of Contracts); ARTICLE-15 (Closely Related Enterprise)

Article 14 of MLI
Splitting up of
Contracts



Article 15 of MLI

Closely
Related
Enterprise



Date : 27.05.2023

Article 14- Splitting-up of contracts

As per Paragraph 1 **Article 14** of MLI provides that, where an enterprise of the contracting jurisdiction itself carries on activities at various building sites, installation projects, construction projects and carries out following activities as mentioned below-

- **Supervisory or consultancy activities** connected to the above activities carried on during one or more period of time, exceeding in **aggregate 30 days, AND**
- Connected activities mentioned above that are carried on at site or project, by one or more **closely related enterprises**, for a period exceeding **30 days each**.

Therefore, if such period exceeds 30 days and satisfies both the conditions as explained above, then in such case, it shall constitute PE in India.

Example :

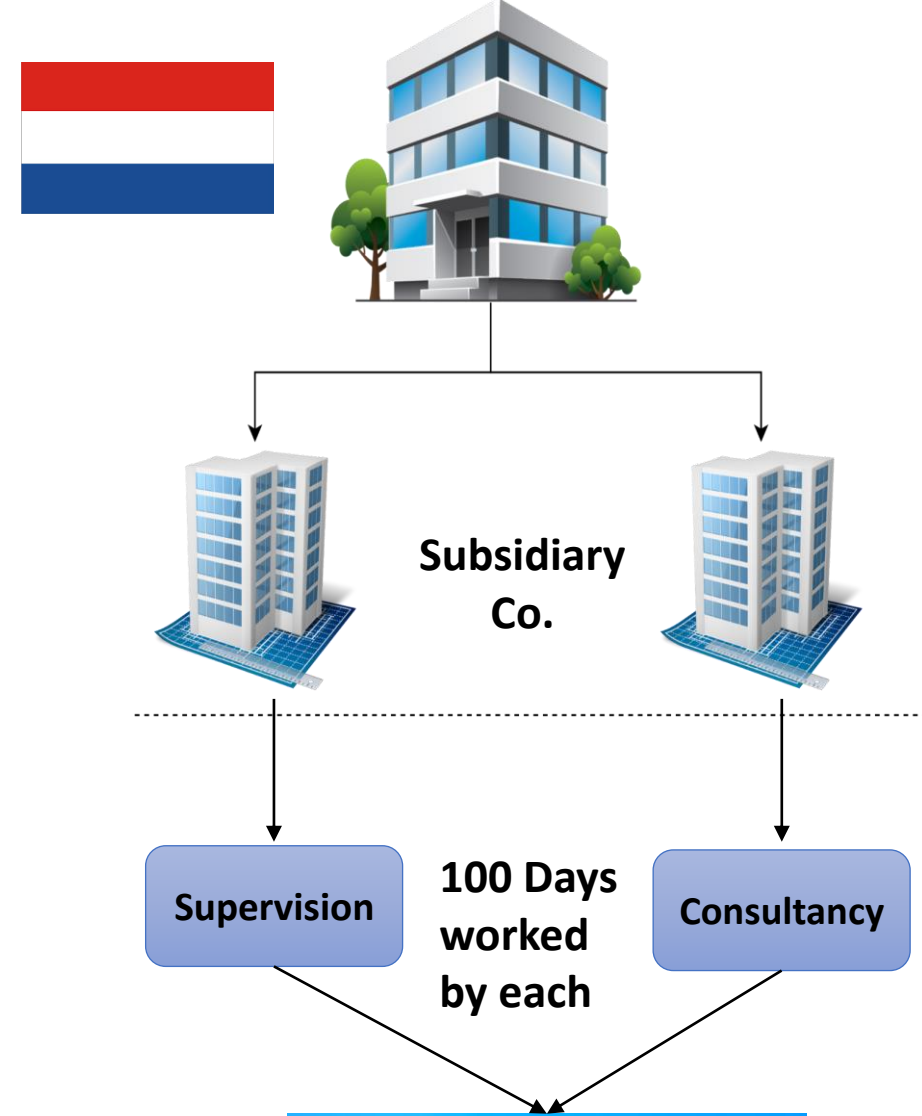
Bob the builder Ltd. Of Netherlands has undertaken a project in India to construct a turnkey project in India. It has awarded the contract to two of its subsidiaries Bob Ltd. For consultancy and Builder Ltd. for supervision. Each of the two companies will undertake work of 100 days each for this contract in India.

Pre- MLI

Since each company does not exceed 183 days in India they will not form a PE in India and hence they would issue no PE certificate and no tax deduction would be done.

Effect of Article 14 (Post MLI)

Since both the subsidiary companies are closely related and the time limit exceeds 30 days the companies would form a PE.



India's Position on Article 14:

- No reservations in respect of Article 14 of MLI has been notified by India which indicates India's intention to adopt this particular Article of MLI.
- From the analysis, it could be concluded that India has not notified any existing provisions under Article 14(4) of MLI that could be replaced by paragraph 1 of this article (as explained in earlier slide).
- Thus, Article 14(1) shall apply to CTA without replacing any existing provisions, wherever so permitted by the position of other Contracting Jurisdiction.

MLI Article 14: Impact on Few Indian Tax Treaties

Few Example of Countries Notified by India	Positions of the Other Contracting Jurisdictions	Impact on India's CTA with the Country
Singapore	Opt out	No Impact
UK	Opt out	No Impact
Japan	Opt out	No Impact
France	No reservation made	Article 14 will apply
Netherlands	Reservation only for exploration and natural resource	Article 14 will apply

Article- 15 (Closely related Enterprise)

Article 15 of MLI provides that:

For the CTA that are modified by Article 12, Article 13, or Article 14, a person is closely related to an enterprise if,

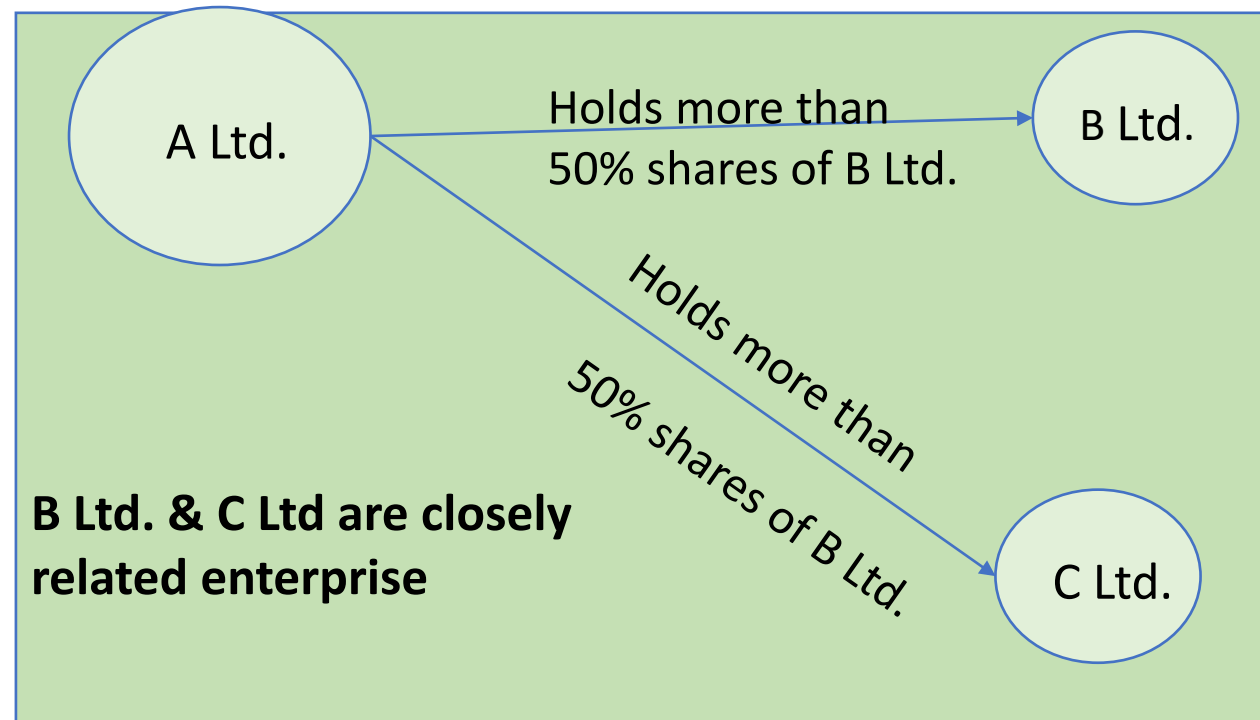
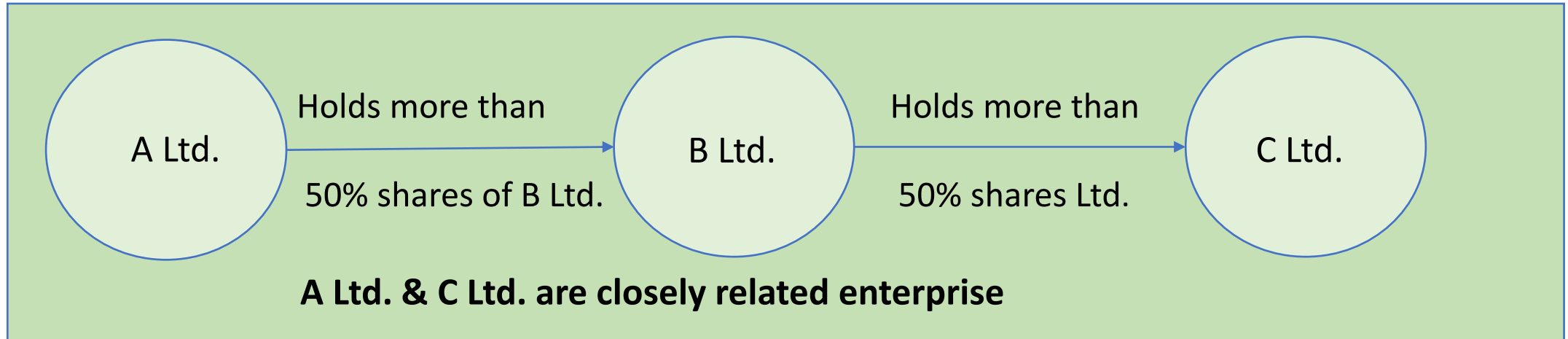
based on all the relevant facts and circumstances,

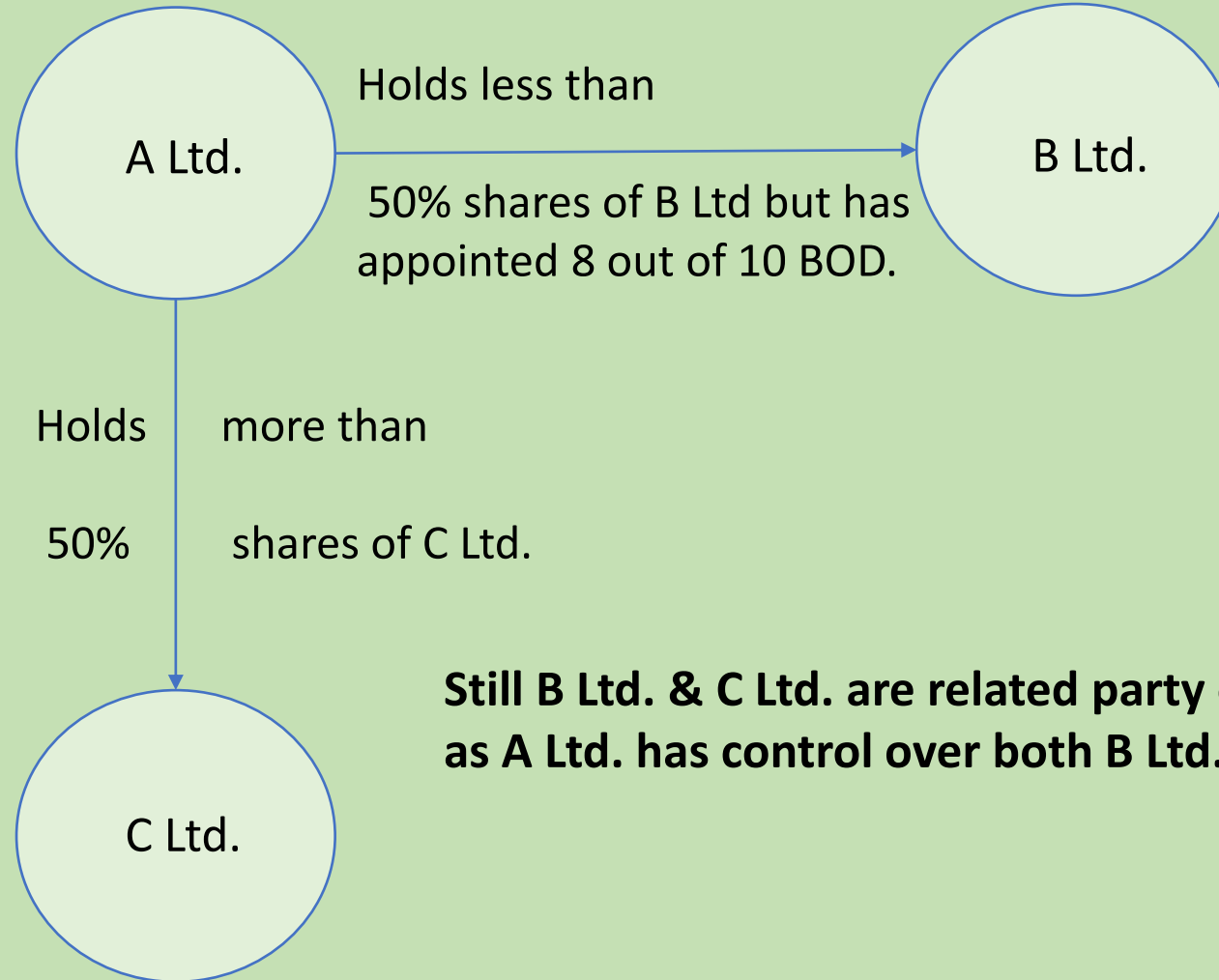
one has control of the other or both are under the control of the same person or enterprise, **or**

If one possesses directly or indirectly more than 50% of the beneficial interest in the other person or enterprise; **or**

In case of a company,
more than 50% of the aggregate vote and value of the company's shares **or**
the Beneficial Equity Interest in the company.

Examples for Closely Related Enterprises





Still B Ltd. & C Ltd. are related party enterprise as A Ltd. has control over both B Ltd. & C Ltd.

India's Position on Article 15:

- From the analysis, it can be concluded that India that India's CTAs have **NOT** made any reservations w.r.t., Article 15.
- Therefore, all its treaties stands modified to include the provision to the extent that its relevant treaty partner have also not made any such reservation.
- Hence, for all these purposes, paragraph 1 of Article 15 shall apply for the purpose of Article 12(2), Article 13(4) and Article 14(1) of MLI.

MLI Article 15: Impact on Few Indian Tax Treaties

Few Example of Countries Notified by India	Positions of the Other Contracting Jurisdictions	Impact on India's CTA with the Country
Singapore	Opt out	No Impact
UK	Opt in	Article 15 will apply
Canada	No reservation made	Article 15 will apply
Australia	No reservation made	Article 15 will apply
France	No reservation made	Article 15 will apply

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>

Reference of Previous SITG of MLI for beginners Series

S.No	Particulars	Link
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
14	Application of Tax Agreements to Restrict party's Right to Tax its own Residents	Click here
15	Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies	Click here
16	Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Click here

Saving
Clause



G
A
A
R



P
P
T

Triangular
Case



THANK YOU

This is the End of MLI Series
We shall meet on next SITG with interesting Case Laws

Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss howsoever sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.