Overview of BEPS - Multilateral Instruments

- *Structure and Application*

Setting the Context

Commentary: Apple Avoided $40 Billion in Taxes. Now It Wants a Gold Star?

Google shifted $23bn to tax haven Bermuda in 2017, filing shows

Firm used Dutch shell company in move known as 'double Irish, Dutch sandwich' that cuts its foreign tax bill

US IRS sues Facebook for $9 billion in unpaid taxes

The IRS lawsuit, filed in a San Francisco court, claimed that Facebook "undervalued the royalty amount between 2010 and 2016, which cut the company's domestic tax bill as the royalties are ultimately reported as income".

Amazon's expected tax avoidance comes despite it nearly doubling its U.S. profits to $11.16 billion in 2018, according to the Institute on Taxation and Economic Policy (ITEP), a nonpartisan tax policy-focused think tank. In fact, instead of paying any federal income taxes, the company received a $129 million tax rebate from the government.

UK: Google called back to parliament to answer tax questions after investigation challenges some of its previous evidence; company denies claims

Need for BEPS and MLI

What's is the issue

- MNEs use arrangements that make profits disappear for tax purpose or allow profits to be artificially shifted to low/no tax jurisdiction
- Revenue losses from BEPS are estimated between USD 100 -240 billion annually. This is 4% - 10% of global revenues from corporate income tax.

Impact of BEPS

- Restore trust and ensure fair competition among all, while maintaining the ability to eliminate double taxation.

Realign Source country taxing rights	Aligning TP outcome with value creation	Access to treaty and prevent abuse	Overhaul the taxation of digital business
Increased reporting for MNC and exchange of information	Strengthening the dispute resolution mechanism	Global Minimum Tax	Consistency

Need for MLI

- The APs issued under BEPS requires amendment /introduction of provisions under domestic tax laws as well as amendment to Tax Treaty;
- The following AP requires amendment to DTAA
  - AP 2 – Hybrid Mismatch Arrangement
  - AP 6 – Prevention of Treaty Abuse
  - AP 7 – Artificial Avoidance of PE
  - AP 14 – Effective Dispute Resolution

Speed

Reduce the timeline to renegotiate 3000+ bilateral treaties

Consistency

Consistency in application of provisions and interpretation by Countries

Flexibility

Countries are given flexibility to adopt provision of MLI

Clarity

Detailed explanatory statements and toolkits available to ensure clarity

Pillars of BEPS

Digital Economy (AP 1)

Coherence

- Hybrid Mismatch Arrangement (AP 2)
- Controlled Foreign Company (AP 3)
- Interest Deduction (AP 4)
- Harmful Tax Practices (AP 5)

Harmful or inappropriate use of international tax legislation to obtain unintended tax benefits

Substance

- Prevention of Tax Abuse (AP 6)
- Avoidance of PE (AP 7)
- Transfer Pricing - Intangible (AP 8)
- TP – Risk & Capital (AP 9)
- TP – High Risk Transactions (AP 10)

Mismatches where profits are being taxed vs. where people responsible for generating these profits are located

Transparency

- Methodologies and data analysis (AP 11)
- Disclosure Rules (AP 12)
- TP Documentation (AP 13)
- Dispute Resolution (AP 14)

Provide tax authorities information to carry out audits better and determine if "fair share" of taxes are being paid

Multilateral Instrument (AP 15)

MLI Road Map

February 2013
Report on Addressing BEPS

July 2013
OECD CFA submits BEPS Action Plan to G20

September 2013
Task force on digital economy

Feb 2015
MLI Development Kicked off

October 2015
BEPS Final packages released – 15 AP

November 2016
Text of MLI Adopted

June 2017
First Signing of MLI – 67 Countries

March 2018
Slovenia became 5th Country to ratify MLI

July 2018
MLI Comes into Force (after 5 countries have ratified)

June 2019
MLI Ratified by India

August 2019
Notification by India MOF

April 2020
MLI applicable for few DTAAs

Fundamental aspects

When MLI Applies

Applies when a country is signatory and deposits the instrument of ratification with depository

Treaty re-negotiation

A CTA can be re-negotiated bilaterally after entering MLI

What is CTA

Agreement where both countries have conveyed their intention to include the DTAA to be covered by MLI

Flexibility between CTA

MLI built with flexibility. Choices are given to countries to opt for Articles/options

Impact on existing DTAA

MLI will operate alongside existing DTAA

Synthesized Text

It is for guidance and parties have no legal obligation to develop. Does not have legal value and not binding

Construct of MLI

Minimum Standard

- All parties to meet minimum standards (Art 6, 7, 16 and 17 of MLI)
- Manner of meeting minimum standards in certain cases
- Opting out is possible only if parties meet the minimum standards by bilateral negotiation of treaties

Notification

- Enables the party to opt for a particular provision
- Party to notify the choice of the options
- Notification of exact articles and para of CTA to be modified/replaced

Optional Provisions

- Certain articles provides alternative options to parties to chose amongst them (Art 5, Art 7 etc.)
- Both countries to chose same option in order to apply – However, there are certain exceptions to it (Art 5, SLOB, Art 8 etc.)

Reservation

- Parties can opt out of a particular article by exercising reservation
- Reservation cannot be made between CTAs
- Certain para of Article can be reserved depending on nature of reservation

Compatibility

- Relationship between MLI provisions and existing CTA provisions
- Four types of compatibility are provided

Amendments

- Post ratification – a party can opt in for optional provisions or withdraw reservations
- Option to withdraw provision already accepted on ratification is not possible

Types of Compatibility Clauses

Type of compatibility clause	When does it apply	What is the effect on existing provision	Notification Requirement
applies **“in place”** of an existing provision	Only when there is an existing provision in the CTA	MLI provision replaces the existing CTA provision. No impact if there is no similar of like provisions in the treaty.	All Treaty Partners have to notify existing CTA provision
“applies to” or **“modifies”** an existing provision	Only when there is an existing provision in the CTA	MLI provision changes the application of an existing provision without replacing it. No impact if there is no similar of like provisions in the treaty.	All Treaty Partners have to notify existing CTA provision
applies **“in the absence of”** an existing provision	Only when the provision is absent in the CTA	MLI provision is added to the CTA .	All Treaty Partners have to notify absence of provision in CTA
applies **“in place of or in the absence of”** an existing provision	Whether existing provision is present in CTA or absent, this clause will apply in any situation. Applicable only when contracting jurisdiction has not made any reservation on application of the provision.	It replaces or supersedes existing provision, or is added to CTA in absence of existing provision.	Where both parties notify existing provision, the provision gets replaced. Where one party notifies and other does not, the MLI provision supersedes CTA provision to the extent of incompatibility

Entry into Force and Entry into Effect

Entry into force ('EIF') for MLI:

Particulars	Entry into force
For first 5 jurisdictions who deposit their ratified copy of MLI with OECD	MLI to come into force on the first day of the month following the expiry of 3 calendar months from date on which 5th Signatory has deposited its instrument for ratification From this date, all 5 signatories become 'parties' to the MLI and shall be bound by it
For other jurisdictions	First day of the month after the expiry of 3 months from the date of deposit of its instrument of ratification

Entry into effect ('EIE') for the respective CTA:

Computed from the latest date of EIF for **each of the treaty partners of a CTA** – referred as "relevant date"

Particulars	Date of entry into effect
Provisions related to withholding taxes	1st day of next calendar year that begins on or after the relevant date
Provisions related to other taxes	Taxable period that begins on or after expiry of 6 calendar months from the relevant date

- Option to replace "calendar year" with "taxable period" for purpose of its own application - India has opted for such replacement
- Option for delay until such country has completed its internal procedures for this purpose

EIE – India's CTA

1.Ratification and filing with OECD		**2. Entry into force ('EOF'): First day of month following col. 1 + 3 months**		**3. Entry into Effect (EIF) :**			
				i. Withholding taxes : 1st day of calendar year (taxable period for India) that begins on or after later of EOF		ii. Other taxes: For taxable periods beginning on or after 6 months from later of EOF	
India	**Singapore**	**India**	**Singapore**	**India**	**Singapore**	**India**	**Singapore**
25 June 2019	21 Dec 2018	1 Oct 2019	1 April 2019	1 April 2020	1 Jan 2020	1 April 2020	1 Jan 2021
India	**Canada**	**India**	**Canada**	**India**	**Canada**	**India**	**Canada**
25 June 2019	29 Aug 2019	1 Oct 2019	1 April 2020	1 April 2020	1 Jan 2021	1 April 2020	1 Jan 2021

MLI - Signatories and EIE - India's perspective

100 Countries have signed MLI as on 10 November 2022

3 Countries have committed to sign MLI

India has notified 93 out of 95 treaties as CTA (China and Marshall Islands left out)

Switzerland, Germany, Mauritius, Oman etc. has not notified India as CTA

79 Countries have notified final ratification instrument

28 out of 46 CTA is effective as on 01 April 2020.

2 CTA – Sweden and Estonia has opted for completion of internal procedure, therefore, yet to come effect

16 CTA will be effective in 2021/2022

India has notified synthesized text with 31 jurisdictions

Provisions of MLI

Part	Article	Title
I	1&2	Scope and interpretation of terms
II		Hybrid Mismatches
	3	Transparent Entities
	4	Dual Resident Entities
	5	Methods for Elimination of Double Taxation
III		Treaty Abuse
	6	Preamble
	7	Principal Purpose Test
	7	Simplified Limitation of Benefit
	8	Dividend Transfer Transaction
	9	Capital Gains on interest in underlying immovable property
	10	Third Jurisdiction PE
	11	Taxing Rights for its own residents

Part	Article	Title
IV		Avoidance of PE Status
	12	Commissionaire Arrangements
	13	Specific Activity Exemption
	13	Anti Fragmentation Rules
	14	Splitting of Contracts
	15	Definition of Closely Related Enterprises
V		Improving Dispute Resolution
	16	Mutual Agreement Procedure
	17	Corresponding Adjustment
VI		Arbitration
VII		Final Provisions

Reservation

Minimum Standard

Article 4 – Dual Resident Entities

- ✓ A person other than individual is considered as resident of more than one contracting state, then the Competent Authorities shall determine the residency through mutual agreement procedure.
- ✓ CAs shall given regard to place of effective management, place where it is incorporated and any other relevant factors.
- ✓ Absence of any relief, such person shall not be entitled to any relief.
- ✓ CAs can provide such relief/exemption from tax in such manner at their discretion

India has not reserved and notified this article, hence, the provisions of this article to all its CTA, subject to the choice of other partner.

E.g. Australia and Japan had reserved the application of discretionary relief, hence under this CTA, CA cannot provide any discretionary relief

Article 6 - Preamble to Tax Treaty

✓ **Minimum Standard – Title to Preamble**
"Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),"

✓ **Additional Language**
"Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.

✓ **India's Position**
India is silent on the Article – being a minimum standard, the countries, who subscribes to MLI, unless otherwise notified, be presumed to have agreed to the change.

Impact of additional language – This is optional, hence subject to the position of other treaty countries

✓ **Impact of CTA**
Singapore, France, UK, Netherlands etc., - Preamble is modified
Russia has opted for optional language – Hence India-Russia treaty will include additional language

Significance of Preamble in interpretation of tax treaty

- **Article 31 of Vienna Convention – "**The context for the purpose of the interpretation of tax treaty shall comprise the text, **preamble** and annexes"

  Although India is not a signatory to Vienna Convention, Indian Courts have embraced the principles of VCLT while interpreting tax matters – UOI vs Ram Jethmalani (2011) 8 SCC1; Engineering Analysis Centre of Excellence Pvt Ltd – CA 8733-8744 of 2018

- **Para 23 of MLI Explanatory statement –** CTA to be interpreted inline with the Preamble Language

- **Para 73 of AP 6 –** will be relevant to the interpretation and application of provisions of the tax treaty

- **Azadi Bachaon Andolan [263 ITR 706] (SC)** – In the context of India-Mauritius, the SC upheld that treating shopping is valid by interpreting the preamble which included "**encouragement of mutual trade and investment"**

- **India had amended Section 90(1) to resonate preamble under Art 6 of MLI**

- **Whether SC ruling in AZA holds valid in the era of MLI? –** Whether SC ruling holds good from India-Mauritius DTAA perspective, as Mauritius has not included India as CTA.

- **Impact of the amended preamble on grandfathered investments – for e.g. India-Singapore**

Article 7 – India's position

Principal Purpose Test	Limitation of Benefit	Simplified LOB
Being a Minimum standard, PPT shall be mandatory part of CTA	Where possible, it is intended to adopt detailed LOB, in addition to or in replacement of PPT with anti conduit rules	Apply simplified LOB with a combination of PPT – subject to opting by treaty partner (including Symmetric/Asymmetric options)
To be applied as Interim measure	**India can bilaterally negotiate treaty to include detailed LOB + anti conduit rules**	**India has opted to adopt SLOB + PPT**

Article 7 – Principal Purpose Test

"Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit – **Reasonable Purpose Test**

unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement – **Object and Purpose Test**

PPT have overriding impact on benefit under a treaty	Benefit could be denied if one of the principal purpose is to obtain treaty benefit	PPT is applied on transaction or arrangement – not entity specific	Object and Purpose to be established by taxpayers
Arrangement vs Transaction – includes series of transactions	Benefits – direct and indirect covered – includes all limitation on taxation provided under CTA	Can have Retroactive application	Powers under PPT is limited compared to GAAR

Article 7 – Select examples provided in AP

#	Example A	Example C	Example E	Example G
Facts	• T Co owns shares of S Co. In absence of T-S treaty, dividend by S Co to T Co is subject to WHT of 25% under domestic law of State S. • T Co assigns right to receive dividends declared but not yet paid by S Co, to R Co, an independent financial institution in State R • Under R-S treaty, there is no WHT on dividends paid by S Co to R Co.	• R Co is in the business of manufacturing electronic devices proposing to set up plant in developing country to benefit from lower manufacturing cost • After preliminary review, 3 potential locations were shortlisted based on political and economic comparability • R Co decided to set up plant in State S, as this is only country with which State R has tax treaty	• R Co has, for the last 5 years, held 24% shares of S Co. • Following the entry-into-force of R-S treaty, R Co decides to increase its ownership to 25% shares of S Co. • Decision to increase ownership by 1% is primarily to obtain treaty benefit of Article 10(2)(a)	Establishing intra-group service company in a jurisdiction with skilled labour force, reliable legal system, business friendly environment, political stability, sophisticated banking system and comprehensive treaty network
Comments	In absence of other facts, PPT is applicable because: 'Reasonable purpose test' not satisfied; and 'object and purpose test' also not satisfied.	• Objective of tax conventions is to encourage cross-border investment, obtaining the benefits of the State R-S convention for the investment in the plant built in State S is in accordance with the object and purpose of the provisions of that convention	• Though increase in investment is for one of the principal purpose of obtaining treaty benefit, it meets the "object and purpose" of the relevant dividend article of treaty • PPT trigger is not warranted	Not reasonable to deny treaty benefits to R Co which conducts real business, using real assets, assumes real risks, and performs multitude economic functions through its own personnel located in State R

Article 7 – Simplified LOB

Conditions	Description
Resident should be a Qualified person (Para 9)	Qualified persons to include Individuals, Government and Government bodies, publicly traded companies/ entities, not-for profit organizations, persons satisfying certain ownership tests, etc.)
Resident should be carrying on active trade or business in the CoR (Para 10)	• Income is derived by person engaged in active conduct of trade or business in CoR • Income derived from/emanates from or is incidental to such business • Exceptions provided as to when person is not engaged in active conduct of business (illustratively- holding company, providing group financing, providing overall supervision/ management of a group)
Derivative Benefits Rule (Para 11)	If, on at least half of the days of any 12-month period, atleast 75% of beneficial interest in resident enterprise is directly or indirectly owned by certain persons entitled to equivalent benefits (Equivalent Beneficiaries defined as a person entitled to equivalent/ more favourable benefit under domestic law, CTA or any other instrument)
Competent Authority (Para 12)	If a resident of contracting jurisdiction is neither a qualified pursuant para 9 nor entitled to benefits under para 10 or para 11, then CA can nevertheless grant the benefits of the CTA

Only 14 countries including India had opted for application of SLOB. In this CTA between India-Greece is an example where Greece chose asymmetric application of SLOB i.e. India can apply PPT + SLOB, whereas Greece will apply only PPT

Article 8 – Dividend Transfer

Existing DTAA has anti-abuse provision in the form of (i) beneficial ownership and (ii) minimum holding percentage which are looked at the time of distribution of dividend. This led to aggressive planning – transfer of shares before declaring dividend for beneficial tax treatment

Article 8 – introduced minimum holding period of 365 days (including date of payment) in addition to minimum holding percentage. Change in ownership directly resulted from corporate reorganization (merger or demerger etc..) shall not be considered.

India has opted to apply the minimum holding period for 24 CTA. India – Portugal has holding period of 2 years, hence MLI will not apply.

Points to Ponder

1. **Straddle holding period i.e. 365 days not satisfied as on payment of dividend**
    - How 365 days to be counted?
    - Difference in language between Art 8 vs Art 9
    - Whether ATO guidance can be relied by India?

2. **Impact of MLI on Most Favored Nation (MFN)?**

E.g. Concentrix Services Netherlands BV (Del HC) – WP. 9051/2020 (India-Netherlands through Slovenia) and Nestle SA (India-Switzerland through Slovenia – order awaited) – Whether minimum holding period required under India-Slovenia through MLI should be applicable to Switzerland and Netherlands DTAA?

Article 12 – Avoidance of Agency PE

MLI Position

Wider scope of Agency PE

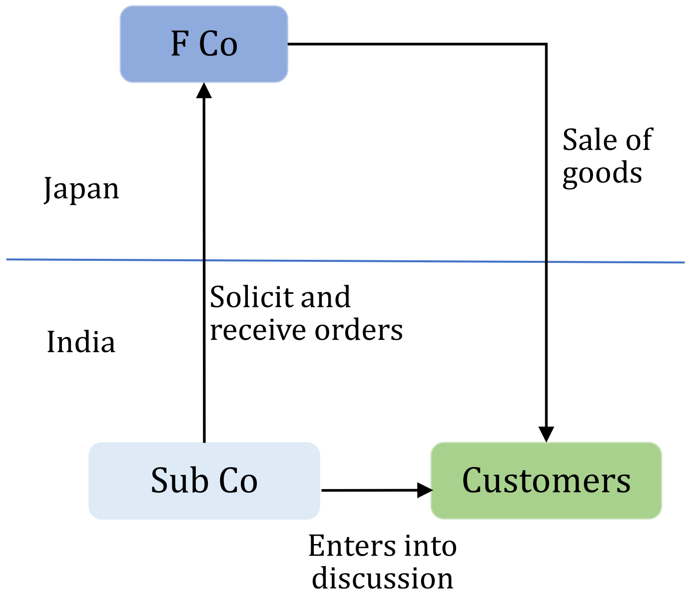
- Dependent agency PE (DAPE) rule extended to cover persons who habitually plays a principal role leading to conclusion of contracts that are routinely concluded without material changes
- Excludes an Independent Agent

Stringent condition for independent agent exclusion

- Not available to agents acting exclusively or almost exclusively on behalf of foreign enterprise, its closely related enterprises (CREs) – **GE Energy Parts Inc (DHC)**
- CRE defined with respect to control/ beneficial holding with threshold of 50% of voting/beneficial/equity interest

India Position

- India has opted for broader agency PE rule and independent agent to all its treaties
- Applicable where the treaty partner has also notified India's treaty in this respect
- Replaces DAPE provision only to the extent refers to agents having authority to conclude contracts - other activities triggering agency PE like maintenance of stock or securing of orders remain unaffected by MLI



- Sub Co does not have authority to vary standard terms of contract, including prices fixed by F Co.
- Based on the standard terms and price range, Sub Co engages in discussions with the customers.
- The contracts sent by Sub Co are approved by F Co remotely

Article 13 – Specific Activity Exemption

Existing Issue

- Generally, Article 5(4) of DTAA allows entities to undertake certain activities which are considered as exempted activities i.e. even if these activities are performed through a fixed place, the same shall not be regarded as permanent establishment.
- These are generally supportive in nature and does not in anyway contribute to the commercial profits
- This exemption has created lot of abuse and activity may be of value if it is forms part of core business (e.g, delivery of goods, purchase of goods) or cohesive business are artificially fragmented

Options under MLI

- Art 13(1) of MLI provides two options

Option A – Exemption shall be available only if the activities listed in CTA meet the test of preparatory or auxiliary in nature on a standalone or overall basis

Option B - Allows countries to retain the automatic exemption to listed activities, irrespective of the same being preparatory or auxiliary in nature.

- **India has chosen Option A –** However, treaty shall be modified subject to notification of same option by treaty partner

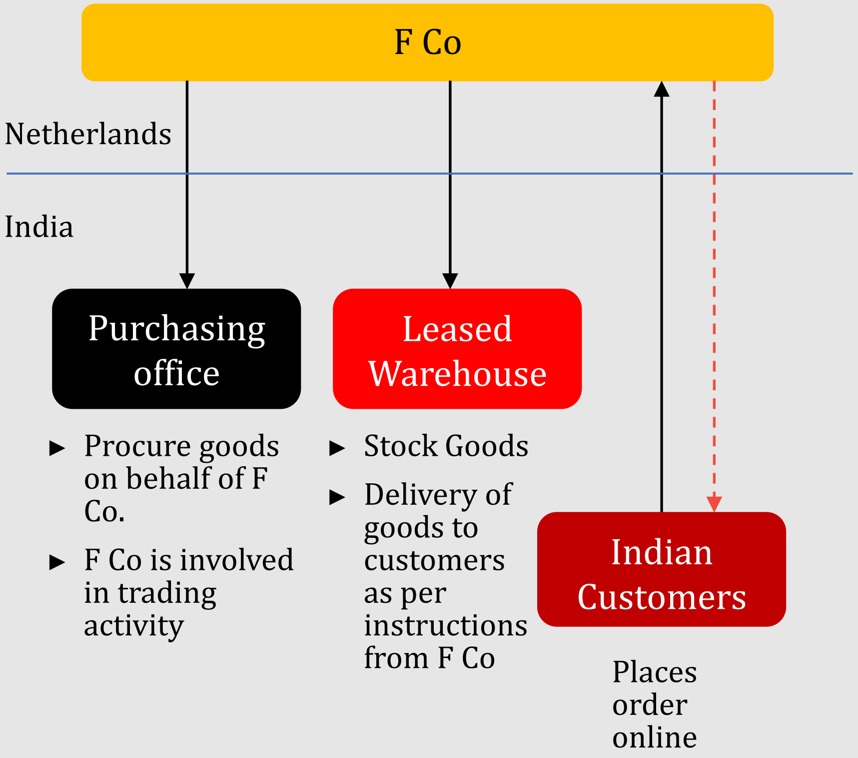
Anti fragmentation rule

Adoption of anti fragmentation rule (even if the options are not chosen to deny specific activity exemption:

1) **Same enterprise or CRE** carries on business activities at the **same place** or **another place** in the state ***and***
2) At lease **one of the place constitute PE** ***(or)*** **overall activity** resulting from the **combination of activities** carried on by the two enterprises **is not PoA character**

Aggregate business activity constitute **complementary functions** that are part of **cohesive business operations**

Article 13 – Specific Activity Exemption



Issue

1) Whether F Co constitutes Fixed Place PE in India as per Article 5 (4) of India – Netherlands Tax Treaty r.w. MLI and whether Preparatory and Auxiliary services exemption available for purchasing and warehousing activity?

Key considerations

- Both India and Netherland had chosen Option A of article 13 to MLI - As a result existing article 5(4) is modified by MLI provisions.
- Stocking of goods and consequent delivery will be granted specific activity exemption only if it satisfies the test of preparatory or auxiliary in nature – Storage and delivery is essential activity in distribution business
- Similarly, purchasing activity may not get specific activity exemption under Art 5(4) - Purchasing part of essential and significant activity for F Co's overall activity – Para 68 of OECD MC, 2017.

Article 14 – Splitting of Contracts

- Automatic aggregation rule for computing threshold for construction or similar PE (for construction/ installation/ supervisory or any PE provision in relation to similar activities/projects which are based on a time threshold)
- Aggregation of time spent on connected activities by CREs at the "same project", to determine whether specific time threshold as given in a treaty is exceeded
- The provision is optional. However, it does not apply only when a specific reservation made by either country to not apply to a CTA

Main Enterprise

- Building / construction/ installation, etc. projects
- Supervisory or consultancy activities –at project site?
- One or more periods of time
- Exceeds 30 days in aggregate –actual physical presence?
- Activities carried on v/s Project Duration

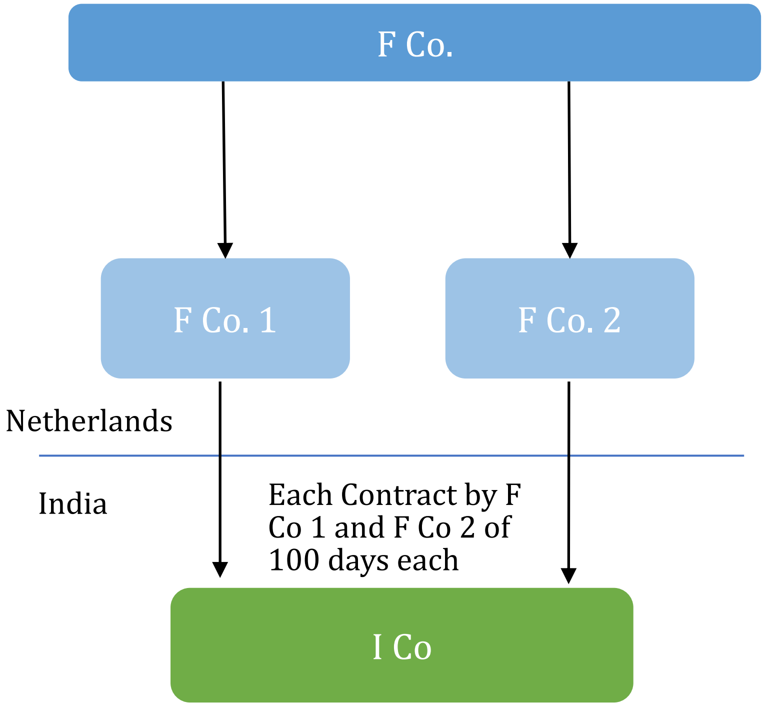
CRE

- Connected Activities
- By Closely related enterprise Article 15 (MLI)
- Each period of CRE > 30 days
- No overlap with period of main enterprise

Connected Activities

- Different activities under contract concluded with same persons or related person
- Conclusion of additional contract is logical consequence of previous contract
- Activities would have been covered by single contract absent tax planning
- Nature of work under different contract is similar or same
- Same employees are performing the activities under different contracts

Article 14 – Splitting of Contracts



Similar to Example J of OECD MC, Art 29

Facts

- F Co 1 and F Co 2, group companies of F Co Group from Netherlands has entered into two separate contracts each with I Co for construction of a project at same site
- Presence of each F Co 1 and F Co 2 in India for FY 2020-21 would be 100 days each and 200 days overall

Questions

- Whether construction/installation PE gets constituted as per provisions of India – Netherlands Tax treaty r.w. MLI Article 14.

Key Considerations

- India and Netherlands had opted for Article 14 of MLI
- As per DTAA, the construction project constitute a PE, if the site or the project continues for a period exceeding exceed 6 months

OECD Matching Database – India-Singapore MLI impact

MLI Matching Database beta © OECD 2017-20

Select jurisdictions:	India	Singapore
Status as of 11 March 2020	India	Singapore
Signature MLI	07/06/2017	07/06/2017
Ratification instrument deposited	25/06/2019	21/12/2018
Mock-up date of ratification		
Status of List	Definitive	Definitive

Read the Disclaimer

Jump to entry into effect MLI

Synthesised text	Synthesised text published by India Not available yet
Article 2 | Covered Tax Agreement	The agreement would be a 'Covered Tax Agreement'.
Article 3 | Transparent Entities	Article 3 would not apply.
Article 4 | Dual Resident Entitities	Article 4 would not apply.
Article 5 | Application for methods for Elimination of Double Taxation	Article 5 would not apply.
Article 6 | Purpose of a Covered Tax Agreement	The preamble text described in Article 6(1) would be included in addition to the existing preamble language. Article 6(3) would not apply.
Article 7 | Prevention of Treaty Abuse	Article 7(1) would apply and supersede the provisions of the agreement to the extent of incompatibility. India has expressed acceptance of the PPT as an interim measure. Article 7(4) would not apply. The Simplified Limitation on Benefits Provision would not apply.
Article 8 | Dividend Transfer Transactions	Article 8 would not apply.
Article 9 | Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Article 9(1) would not apply. Article 9(4) would not apply.
Article 10 | Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions	Article 10 would not apply.
Article 11 | Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	Article 11 would not apply.
Article 12 | Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies	Article 12 would not apply.
PE – Article 13 | Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Article 13(4) would not apply. Neither Option would apply.
PE – Article 14 | Splitting-up of Contracts	Article 14 would not apply.
PE – Article 15 | Definition of a Person Closely Related to an Enterprise	Article 15 would not apply.
Article 16 | Mutual Agreement Procedure	The first sentence of Article 16(1) would not apply. The second sentence of Article 16(1) would not apply. The first sentence of Article 16(2) would not apply. The second sentence of Article 16(2) would not apply. The first sentence of

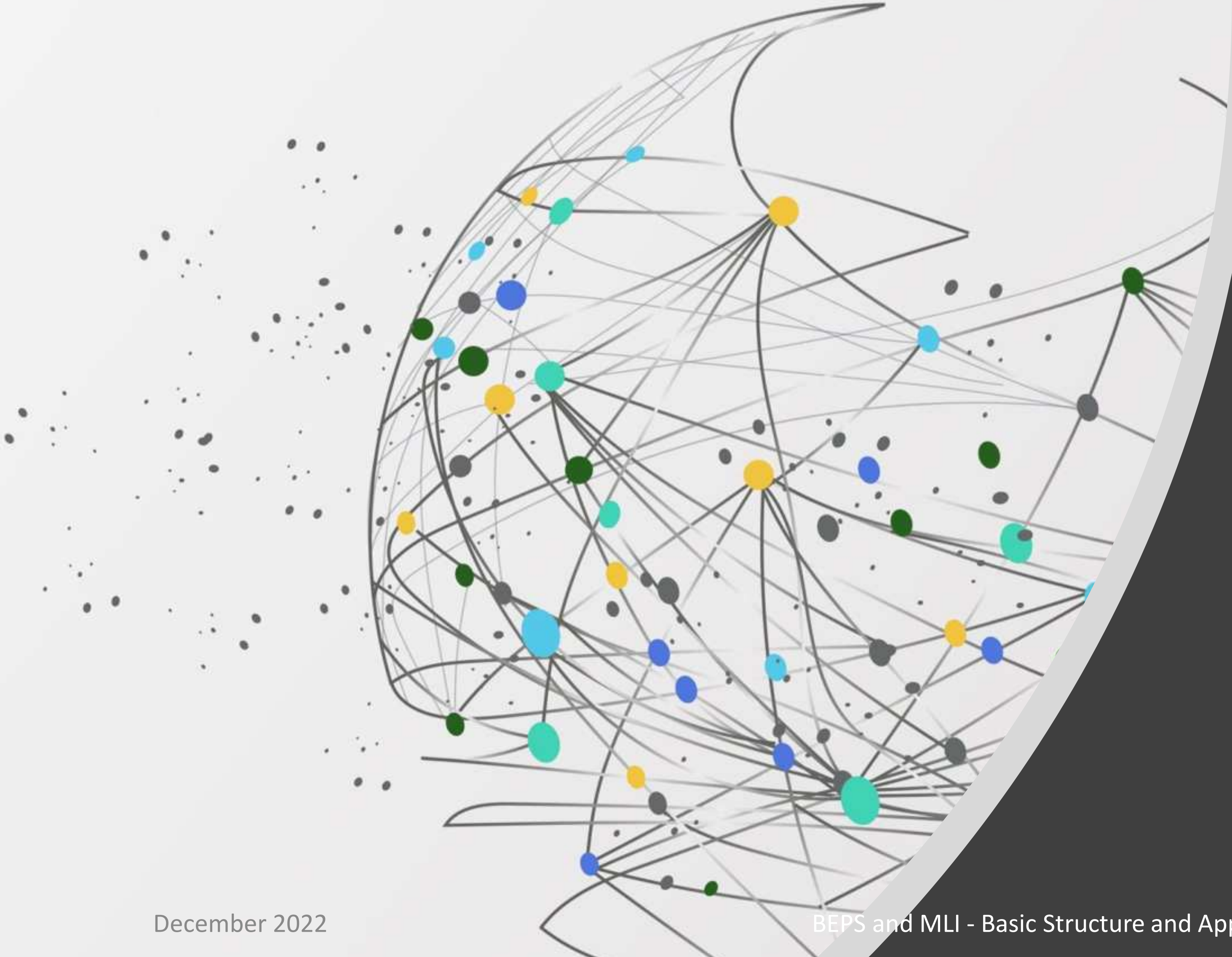
Article 17 | Corresponding Adjustments	Article 17 would not apply.
Part VI – Article 18 | General applicability of Part VI (Arbitration)	Part VI would not apply.
Part VI – Article 19 | Mandatory Binding Arbitration	
Part VI – Article 23 | Type of Arbitration Process	
Part VI – Article 24 | Agreement on a Different Resolution	
Part VI – Article 28 | Reservations on the scope	
Article 35 | Entry into Effect MLI	For the purposes of the application by India, 'taxable period' would apply.
Article 36 | Entry into Effect of Part VI	
Entry into Effect MLI	Article 35(5) would not apply. Neither Contracting Jurisdiction has made a reservation under Article 35(7)(a).
in India with respect to taxes withheld	MLI shall have effect in India with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the taxable period that begins on or after 1/10/2019.
in India with respect to other taxes	MLI shall have effect in India with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1/4/2020.
in Singapore with respect to taxes withheld	MLI shall have effect in Singapore with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1/1/2020.
in Singapore with respect to other taxes	MLI shall have effect in Singapore with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1/4/2020.

Snapshot of India’s Position of other articles

Article of the MLI	India’s position	Potential impact
Article 3- Transparent Entities Income derived by or through a transparent entity shall be considered income of a resident only to the extent that income of such entity is treated for the purposes of taxation, as income of a resident of that contracting state	Reserved	Eligibility of fiscally transparent entities to claim benefit under India's tax treaties would continue to be as per the provisions of the particular tax treaty.
Article 9 - Capital gains from alienation of shares or interests of entities deriving their value principally from immovable Property Value threshold (as mentioned DTAA) is met at any time during 365 days preceding the alienation and provision shall apply to comparable interest in partnership or trust Additionally, a value threshold of more than 50% is prescribed for source taxation	India opted to adopt look back period of 365 days + value threshold of 50%	Currently, none of the tax treaties signed by India provides for look back period for capital gains. Term ‘principally’ - OECD MC/UN MC suggested 50% threshold earlier The applicability of the Article depends on notification by the treaty partner
Article 10 - Anti-abuse rule for permanent establishments (PE) situated in third Jurisdictions The Article seeks to deny treaty benefits in respect of income derived by a tax resident and attributable to a PE of the tax resident in a third jurisdiction, such income is exempt from tax in the residence state and the tax in the third jurisdiction (where PE is located) on such income is less than 60% of the tax that would be imposed in the residence state if the PE were located there. Discretionary relief can be sought if the income derived in connection to incidental to active trade or business carried through PE	India has neither made any notification or reservation of this article.	The article is applicable if the other treaty partner has opted and notified it. This creates an obligation of Indian payers to understand the taxability of PE between the payee state and the state in which such payee has PE

Snapshot of India’s Position of other articles

Article of the MLI	India’s position	Potential impact
Article 11 - Application of tax agreements to restrict a party’s right to tax its own residents The Article is a “savings clause” which provides that a treaty does not restrict a jurisdiction’s right to tax its own residents, except with respect to certain treaty provisions for e.g. Correlative Adjustment, Relief from double taxation, Non-discrimination etc.	India has neither made any notification or reservation of this article.	The article is applicable if the other treaty partner has opted and notified it.
Article 16 – Mutual Agreement Procedure Allow taxpayers to present a MAP case to the CAs of either of the states and not only to the CA of the state of residence	Reserved the article on the basis that it would meet the minimum standard by allowing MAP access in the resident state and by implementing a bilateral notification process	All India’s CTAs allow MAP access in resident state. India has also issued detailed MAP Guidance on August 07, 2020
Article 17 – Corresponding adjustment As a complementing best practice, the MLI suggests that contracting states include a provision to provide that where a TP adjustment is made in one of the contracting states, the other contracting state shall provide corresponding adjustment (Article 9(2) of OECD MC)	India has reserved its right to apply this article to its CTAs that already contain the enabling provision	India has in the past issued a press release (27 November 2017), where even in the absence art 9(2), the entities can approach Bilateral APA and MAP
Article 18 – 26 – Arbitration If, under the MAP process, the CAs do not agree on the correct interpretation of the DTAA, the CAs can submit the matter to an independent arbitrator (or a panel of three arbitrators) for decision. The arbitrators will decide which of the CAs is correct	India has chosen not to apply mandatory arbitration	No impact – India’s view is that arbitration impinges its Sovereign Rights



Thank You

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