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## GOVERNMENT OF INDIA RATIFIES MLI – BRINGING INDIA ON THE CUSP OF A NEW INTERNATIONAL TAX REGIME

14 June 2019

**Update**

The Government of India (Union Cabinet) has approved the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and India's final position to the same.

**Background and Key Highlights**

*Our Ergo Newsflash dated 3 July 2017 provided a detailed background to the MLI, summary of its important provisions including the impact of the provisional reservations and positions expressed by India on its existing network of tax treaties.*

With an object to address aggressive tax strategies by Multinational Enterprises (MNE), the Organisation for Economic Cooperation and Development (OECD) had undertaken the landmark Base Erosion and Profit Shifting (BEPS) Project. Under the BEPS Project, the OECD had identified 15 Action Points (BEPS Action Plan) to address aggressive tax planning strategies which exploit gaps and mismatches in tax rules and result in the shifting of profits by MNEs to no/low tax jurisdictions. The MLI was envisaged as a faster mechanism to give effect to various recommendations in the BEPS Action Plan and as an alternative to the time-consuming process of amending more than 3000 bilateral tax treaties.

The MLI seeks to implement a series of measures to address treaty abuse, dispute resolution, artificial avoidance of Permanent Establishment (PE) and hybrid mismatch arrangements among other key issues which resulted in unintended consequences of tax treaties. It intends to counter the existing lacunae in the international tax regime and aims to curb revenue loss by preventing tax treaty abuse and by ensuring alignment of taxation with value creation.

As a part of the Ad Hoc Group working on the BEPS project, India had actively participated in drafting the MLI. On 7 June 2017, India had signed the MLI along with 67 other jurisdictions and submitted its provisional notification (covering all its tax treaties). As on 29 May 2019, around 88 jurisdictions have signed the MLI, including Canada, China, France, Germany, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Mauritius, Netherlands, Russia, Singapore, South Africa, Spain, Switzerland, United Kingdom. By 1 September 2019, it shall have entered into force in 26 jurisdictions, including France, Japan, Netherlands, Singapore, UAE and UK. Notably, USA is not a signatory to the MLI and accordingly India-USA tax treaty would remain entirely unaffected by the MLI. Further, while Mauritius is a signatory to the MLI, as per its preliminary MLI position, India-Mauritius tax treaty has not been listed as a Covered Tax Agreement (CTA). If the final position of Mauritius continues, the MLI shall also not affect the India-Mauritius tax treaty.

It is pertinent to note that the MLI shall apply alongside the existing bilateral tax treaties by modifying their application to implement the BEPS measures.

***Comment***

Upon receipt of the instrument of ratification from the President of India, India would need to deposit the instrument of ratification with the OECD depositary. While the date of 'entry into force' of the MLI for India would depend on the date India deposits the ratification instrument with the OECD depositary, its 'entry into effect' with respect to any specific CTA will additionally depend on the date of deposit of ratification instrument by the concerned country with which India has a bilateral tax treaty.

Further, while India had submitted a provisional list of reservations and notifications at the time of signing the MLI, India's final position has now been approved by the Union Cabinet. Earlier, India had provisionally notified all its tax treaties for this purpose and had also submitted reservations to certain articles of the MLI. One will now need to closely follow India's final position along with the positions of the other MLI signatory countries in order to determine the timing, scope and extent of applicability of various articles of the MLI.

India has been one of the first adopters of multiple BEPS measures like thin capitalisation, Country by Country Reporting (CbCR), digital economy taxation (equalization levy, significant economic presence). By ratifying the MLI, India has once again demonstrated its eagerness to adopt BEPS measures in order to set the balance in favour of an anti-abuse and value creation driven international tax regime. Very soon, India's tax treaties would need to be read with the MLI provisions in order to determine tax implications in cross border transactions.

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