

Introduction to Multilateral Instrument

February 07, 2020

CA K Prasanna

[Email - prasskrish88@gmail.com](mailto:prasskrish88@gmail.com)

Mobile + 91 98844 82153



Content



MLI
Introduction



Preamble



**Avoidance
of PE**
Article 12-15



**Comparati
ve Analysis**



Concepts



**Hybrid
Mismatch**
Article 3-5



**Improving
Dispute
Resolution**
Article 16-17



Q&A



**Structures
of MLI**



Treaty Abuse
Article 6-11



Arbitration
Article 18-26

1 – MLI Introduction

Introduction

Development of MLI

- The MLI is a multilateral treaty, which would operate to modify bilateral tax treaties between two or more jurisdictions.
- The Convention is to be applied alongside existing bilateral tax treaties, modifying their application in order to reflect treaty-related BEPS measures.
- Developing a MLI for implementation of BEPS one of the action plans of BEPS (AP-15) Action plan 15 of the BEPs project mandated formation of an ad-hoc group for developing the MLI;
- Ad-hoc group to develop MLI to modify existing bilateral treaties to swiftly implement BEPS measures;
- Participation in the ad-hoc group was open to all interested countries – 99 countries, 4 non-state jurisdictions and 7 international and regional organizations participated
- Sub-group established in the ad-hoc group on mandatory binding arbitration
- Discussions relating to mandatory binding arbitration concerned both – developing substance of the provision and modalities of its implementation

Why MLI?

Alternatives to MLI

Alternatives	Issues
Negotiation / renegotiation of treaties	<ul style="list-style-type: none">• Protracted negotiations• Proclivity of states to agitate allied issues to further protract negotiations• Parliamentary approval process may need to be repeated for every treaty• Finally agreed modifications may not align with BEPS
Standard protocols to tax treaties to be developed	
Commentary to model conventions to be updated	<ul style="list-style-type: none">• Status and authority of commentary to model conventions in international tax law uncertain• Not all changes required can be done through commentary

How MLI address the above issues?

- No need for states to interact or hold meetings with one another and no negotiation process
- MLI to be developed by an ad-hoc group with members consisting of world's leading tax experts with a focus on meeting BEPS
- States to approach or undertake parliamentary processes only once

Arguments against MLI?

- Complex Instrument
- May lead to significant interpretational issues

2 – Concepts

Important Concepts



MLI – Covered Tax Agreements

MLI to apply to only such treaties of the contracting jurisdictions which are specified by them

A treaty may not be notified as a CTA where the same already incorporates BEPS measures (new treaties or recently renegotiated treaties)

Necessary for all parties to the CTA to specify the agreement for MLI purposes

Treaties entered into subsequently or not included while signing of MLI may be brought into the fold subsequently

MLI not to apply to agreements applying solely to shipping and air transport or social security

MLI – Minimum Standards

All CTAs are required to adhere to minimum standards i.e. minimum standard for prevention of treaty abuse (AP – 6) and improvement of dispute resolution (AP-14)

Contracting jurisdictions to have little to no scope of opting out of minimum standards

However, where contracting jurisdictions do not wish to adopt the minimum standards through MLI, the same can be achieved through by reaching a mutually satisfactory solution with the treaty partner which is consistent with minimum standards

Compliance with minimum standards in such cases to be monitored and reviewed

MLI – Compatibility Clause

- Compatibility clauses define the relationship between the MLI and the provisions of CTA
- Intended to address overlap or conflicts between MLI and CTA

Type of compatibility clause	When does it apply	Effect on existing provision	Notification Requirement
MLI Provision applies “in place of” existing CTA Provision	Only when there is an existing provision in the CTA	MLI provision replaces the existing CTA provision	All Treaty Partners have to notify existing CTA provision
MLI Provision “applies to” or “modifies” existing CTA Provision	Only when there is an existing provision in the CTA	MLI provision changes the application of an existing provision without replacing it	All Treaty Partners have to notify existing CTA Provision
MLI Provision applies “in absence of” existing CTA 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
MLI Provision applies “in place of” or “in absence of” existing CTA provision	Whether existing provision is present in CTA or absent	It replaces or supersedes existing provision, or is added to CTA in absence of existing provision.	<ul style="list-style-type: none"> • 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

Applying MLI

Decoding the steps

Entry in force of the MLI

- Applicability of MLI depends on the date of entry in force of the MLI.
- Article 13 of the MLI stipulates that the Instrument would come into force only three months after five jurisdictions have deposited the instrument of ratification, acceptance or approval.
- To be verified whether the MLI is in force for both the contracting states to the tax treaty i.e., the MLI would apply to a tax treaty only after both the parties to the treaty have ratified the MLI.

Covered Tax Agreement (CTA)

- The signatories to the MLI are offered the flexibility to submit a list of tax treaties that they intend to be covered under the MLI i.e., CTAs, at the time of signing the MLI.
- India, for instance, has listed tax treaties with 93 countries as CTAs in the provisional position submitted

Reservation and choices

- Prior to applying a specific provision of the MLI, it is imperative to verify whether either of the contracting states have made any reservations/ modifications to the provision.
- A particular provision under the MLI can be applied only if both the contracting states have made a symmetrical and synchronized reservation.
- To this extent, a reservation made by a contracting jurisdiction with respect to a provision can have the potential to block the application of the provision, unless a symmetric reservation made by the other contracting state.

Modifying existing provisions

- The MLI requires parties to notify existing provisions to be modified by the MLI provision.
- Each Article contains provisions describing details on how the applicable MLI provisions modify a CTA (compatibility clauses). The effect of notifications depends on the type of compatibility clause which could provide that the MLI provision applies “in place of”, “applies to” or “modifies”, “in the absence of”, or “in place of or in the absence of”.

Entry into effect

- The MLI provisions will generally have effect in the contracting states with respect to a CTA, at different moments with respect to taxes withheld at source and all other taxes, as provided in Articles 35 and 36.

Timelines of MLI

Ratification and deposit of final filing with OECD		Enter into Force - 1st day after 3 months end from deposit		Enter into Effect			
				Withholding - 1st day of calendar (India- Taxable Year)		Other Taxes - Taxable period beginning after 6 months from Entry into force	
India	Singapore	India	Singapore	India	Singapore	India	Singapore
25-Jun-19	21-Dec-18	01-Oct-19	01-Apr-19	01-Apr-20	01-Jan-20	01-Apr-20	01-Jan-21

- As of 29 January 2020, 94 Countries have signed MLI
- 41 Countries have deposited final instrument of ratification with OECD
- For 23 Countries MLI will come into effect by 01 April 2020

3 – Structures of MLI

Structures of MLI

Parallel instrument

MLI to be read along with CTA. Consolidated CTA may be prepared for ease of reference

MLI not to replace the CTA

MLI not to modify the language of the CTA unlike protocols

MLI not to freeze CTA in time – latest provision to prevail

Flexible instrument

CTA to be specified by contracting jurisdictions

Flexibility with regard to minimum standards (discussed in subsequent slides)

Optional provisions and alternative provisions (discussed in subsequent slides)

Ability to opt out of provisions entirely or partly

Structure of substantive provisions

Changes in terminologies to accommodate multilateral implications

Replacement of cross-reference to specific articles and paragraphs with descriptions of those provisions

Compatibility clauses to define relationship between provisions of MLI and CTA (discussed in subsequent slides)

Reservations (discussed in subsequent slides)

Notification clauses for optional provisions

Structures of MLI

Part I Articles 1 - 2	Scope and Interpretation of Terms	Part VI Articles 18 - 26	Arbitration
Part II Articles 3 - 5	Hybrid Instruments	Part VII Articles 27 - 39	Final Provisions
Part III Articles 6 - 11	Treaty Abuse		
Part IV Articles 12 - 15	Avoidance of Permanent Establishment Status		
Part V Articles 16 - 17	Improving Dispute Resolution		

4 – Preamble

MLI - Preamble

Full title of the MLI

Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting

Parties recognize that

- Governments lose substantial corporate tax revenue due to BEPS where they are subject to no tax or reduced tax
- BEPS is a pressing issue not only for industrialised countries but also for emerging economies and developing countries

Parties note that

- OECD/G20 BEPS package
 - a) Address hybrid mismatch arrangements
 - b) Prevent treaty abuses
 - c) Address artificial avoidance of PE status
 - d) Improve dispute resolution

Parties are conscious of

- The need to ensure swift, co-ordinated and consistent implementation of treaty related BEPS measures

Parties note the need

- To ensure avoidance of interpretation of existing tax treaties to create opportunities of double non-taxation or reduced taxation through tax evasion and avoidance
- This includes treaty shopping arrangements aimed at obtaining reliefs provided in the agreements for indirect benefits of residents of third jurisdictions

Parties recognize

- The need for an effective mechanism to implement agreed changes in synchronized and efficient manner across the network of existing treaties without the need to bilaterally renegotiate each such agreement

5 – Hybrid Mismatch

Article 3-5

MLI – Article 3 – Transparent Entities

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> Income derived by or through a fiscally transparent entity shall be regarded as income of a resident of a Contracting Jurisdiction only to the extent that such income is treated as income of a resident of that Contracting Jurisdiction, under the tax laws of that Contracting Jurisdiction. 	<ul style="list-style-type: none"> India's tax treaties with USA, UK, Norway and Sweden provide that "resident of a Contracting Jurisdiction" shall apply only to the extent income derived by partnership, estate or trust is subject to tax in that state as income of a resident, either in its hands or in the hands of partners or beneficiaries. Traditionally, India is always of the view that only resident of the contracting state is eligible for benefit under the tax treaty². 	<ul style="list-style-type: none"> India has chosen not to apply Article 3 for its CTAs. Transparent entities generally do not qualify as a "resident" to claim benefits under the tax treaty, except existing treaties where such entities are specifically covered.

MLI – Article 4 – Dual Resident Entities

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> Residential status of persons other than individuals is to be determined by competent authorities (CA) through mutual agreement procedures (MAP), having regard to place of effective management (POEM), place of incorporation and other factors. In the absence of such agreement, such person shall not be entitled to any relief or benefit under the CTA, except to the extent agreed upon by the CA. Therefore, if the CA agrees, the dual resident entities may be entitled to tax relief or exemptions provided under CTA. 	<ul style="list-style-type: none"> India-Finland treaty provides that the CA through MAP shall determine the residential status of a person other than an individual. Treaties with Canada, Lithuania, Hong Kong and Latvia provide denial of treaty benefits in the absence of MAP. In certain treaties, the residence is determined using Place of Effective Management and in case POEM cannot be determined, then the question shall be settled by MAP³ 	<ul style="list-style-type: none"> India has chosen to apply this provision in respect of 91 CTAs (CTA with Greece⁴ and Libya are excluded) – this implies that this provision would supersede existing treaty provisions.

MLI – Article 5 – Methods for elimination of double taxation

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<p>This Article provides three options for elimination of double taxation:</p> <ul style="list-style-type: none"> • Option A – Switch over from exemption to credit method in respect of income derived and capital owned in certain cases (to avoid double non-taxation situation) • Option B – Exemption method not to be applied for dividends, which are deductible in the other contracting state. (For example, interest on CCDs which are treated as dividends in the recipient country) • Option C – The credit for taxes paid in other jurisdictions should not exceed the net taxable income. 	<ul style="list-style-type: none"> • Article 24(2) (c) of India-Luxembourg and Article 24(2) of India – Netherland and Article 23(3) of India-Brazil tax treaties operates in a manner similar to Option A suggested under MLI. 	<ul style="list-style-type: none"> • India has chosen Option C

6 – Treaty Abuse

Article 6-11

MLI – Article 6 – Purpose of a CTA

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<p>This Article seeks to modify the preamble to bilateral treaties to expressly state that the purpose of the treaty is not to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance and anti-treaty shopping objectives.</p> <p>Additional language were prescribed under MLI, which is optional</p> <p>This is a minimum standard and it is not open to a Contracting State to exclude the applicability of this provision</p>	<ul style="list-style-type: none"> • The language found in most of India’s tax treaties is “for the avoidance of double taxation and the prevention of fiscal evasion”. • India-Hong Kong DTAA covers the aspect of treaty shopping arrangements, which results in indirect benefit of a person in third jurisdiction 	<ul style="list-style-type: none"> • Being a minimum standard, this preamble would be incorporated in all of India’s CTAs. Therefore, to this extent the preamble will stands modified • India chose not to adopt additional language to its CTA

MLI – Article 7 – Prevention of Treaty Abuse

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> No benefit will be granted in respect of item of income or capital, if reasonable to conclude that obtaining benefit was one of the principal purposes of any arrangement or transaction This Article provides three approaches for preventing treaty abuse: <ul style="list-style-type: none"> ✓ Principle Purpose Test (PPT) ✓ Simplified Limitation of Benefit (SLOB) ✓ Combination of detailed LOB and anti-conduit measures One exception to PPT is that the treaty benefit shall not be denied, if the party able to establish that object and purpose of the relevant provisions of CTA under the circumstances. (Discretionary relief) PPT is a mandatory minimum standard in Article 7. Contracting states can supplement the same by applying a simplified LOB provision or detailed LOB provision including anti-conduit measures. Vide Article 7(4) of MLI, the person to whom the benefit was denied can make a request to CA and on satisfaction, the CA can grant CTA benefit 	<ul style="list-style-type: none"> Currently, India's tax treaties several countries (e.g. Finland, Korea, Luxembourg, etc.) contains a provision to deny treaty benefits if the principle purpose of the arrangement or transaction is to obtain treaty benefit. In case of DTAA's with UK⁷, Poland and Norway, in addition to the above clause, the existence of resident is also covered. Further, treaties with countries like USA, Sri Lanka, Iceland, Uruguay, Mexico etc. contains a clause similar to SLOB clause. Treaty with Singapore and Mauritius has LOB limited to capital gains 	<ul style="list-style-type: none"> India has adopted PPT has interim measure with an intention to adopt LOB in addition to or in replacement to 7(1) through bilateral negotiation India has chosen to apply the SLOB provisions in addition to PPT approach. However, its applicability to India's tax treaties will depend on whether its treaty partners have also chosen to adopt the SLOB clause. India has made an reservation to Article 7(4) of the MLI, thereby, the CA cannot grant discretionary relief. Impact of PPT on DTAA with Mauritius, Singapore and Cyprus? India has made an reservation to Article 7(4) of the MLI, thereby, the CA cannot grant discretionary relief.

MLI – Article 8 – Dividend Transfer Transaction

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none">• A minimum shareholding period of 365 days upto the date of dividend is required to be satisfied for claiming exemption from tax or reduced rate of tax in respect of dividends. (Look back provision)• In addition to the above, the beneficial owner or recipient of dividend has to own a certain minimum shareholding.• Exception is given for change in ownership due to corporate reorganization such as merger or division reorganization.	<ul style="list-style-type: none">• India-Portugal treaty provides for a minimum holding period of two years.• India-Zambia treaty provides for a minimum holding period of six months.	<ul style="list-style-type: none">• India has notified the Article would not apply to Portugal treaty.• It has further notified 21 treaties (Canada, Denmark, Singapore), which provide for a concessional rate of dividend without providing a shareholding period⁹.

MLI – Article 9 – Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> The Article provides two alternatives: <ol style="list-style-type: none"> Where the value threshold (to be bilaterally agreed by countries) is met at any time during the 365 days preceding the alienation, the capital gains from the sale of shares or comparable interests shall be taxable in the source country. Similar to (1), additionally a value threshold of more than 50% is prescribed for trigger of source taxation in this behalf. The Article shall apply to partnership or trust. 	<ul style="list-style-type: none"> Currently, none of the tax treaties signed by India provides for look back period for capital gains. Further, instead of specifically providing the quantum of threshold, the term “principally” has been used in respect of certain existing treaties (for example, Austria, Korea etc.) 	<ul style="list-style-type: none"> India has chosen Alternative 2 in respect of 71 CTAs. Impact of application of this article in the context of REIT/InveiT has to be evaluated.

MLI – Article 10 - Anti-abuse rule for permanent establishments (PE) situated in third jurisdictions

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> The Article seeks to deny treaty benefits in respect of income derived by a treaty resident and attributable to a PE in a third jurisdiction, 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. This article carves out an exception where discretionary relief is allowed in respect of income derived in connection to or incidental to an active trade or business carried out through the PE, 	<ul style="list-style-type: none"> Currently, none of India's tax treaty has this rule. 	<ul style="list-style-type: none"> India has not made any reservations in respect of this article. This rule may not have any impact if India is the residence state, as the domestic law permits India to tax global income of residents, including income attributable to PE.

MLI – Article 11 – Application of tax agreements to restrict a party’s right to tax its own residents

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> 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. The main aim is to defeat interpretation claiming that some domestic rules may be contrary to treaty provisions e.g. taxing residents on the income of their controlled foreign corporations, or partners on their share of profits¹¹ 	<ul style="list-style-type: none"> Article 1(3) of India-USA contains saving clause. As per the domestic tax laws, a resident is taxed on its global income and to the extent of double taxation, a tax credit is granted The phrase ‘may be taxed’ used in tax treaty were subject to controversy in India in the past², wherein the Hon’ble Supreme Court held that source country has exclusive right to tax the income. This issue was settled by an amendment to Section 90(3) of the Act followed by issue of notification explaining the expression ‘may be taxed’. 	<ul style="list-style-type: none"> India has not made any reservations or notified any CTA in respect of this article. Therefore, the applicability of this article to CTA depends on the position adopted by the treaty partner. The use of treaty provision to create double dip in case of PE in source country may not be possible In case where a DTAA provides for exclusive right to source country, India may still gain right to tax resident’s income depending on the MLI position adopted by the treaty partner

7 – Avoidance of PE

Article 12-15

MLI – Article 12 – Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> The Article sets out how changes to PE article would have to be incorporated to prevent artificial avoidance of PE The meaning dependent agent PE has been extended to include a person who habitually plays a principal role in the conclusion of contracts that are routinely concluded without material modification by the enterprise. The above would however not apply in the case of an independent agent. A person cannot be considered an independent agent if he acts exclusively or almost exclusively on behalf of closely related enterprises. 	<ul style="list-style-type: none"> India's tax treaties uses the phrase "authority to conclude contract", which has been interpreted by Courts very broadly Treaties with France, Netherlands, and USA provides that an agent will not be regarded as an independent agent if he is devoted wholly or almost wholly on behalf of an enterprise and the transactions are not at arm's length. 	<ul style="list-style-type: none"> India has not made any reservations in respect of this article and has notified all 93 CTA to adopt this article.

MLI – Article 13 – Artificial avoidance of permanent establishment status through the specific activity exemptions

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> This Article provides two options for modifying preparatory and auxiliary PE exemption in tax treaties: Option A: Exemption should only be available if the specific activity listed in the CTA is of a preparatory or auxiliary character on 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. Independent of the above, this Article, further, contains a provision for adopting an anti-fragmentation rule which denies specific activity exemption where the activities carried out by the foreign enterprise along with its CREs, at the same or another place, go beyond the preparatory or auxiliary nature. 	<ul style="list-style-type: none"> India's tax treaties in case of Finland, France, Germany, UK, Hong Kong operate in a manner similar to Option A (refer Article 13(2)(c) of MLI) i.e. a specific clause is included to cover the combination of activities¹⁸ and such activity is of preparatory or auxiliary in nature. In respect of DTAA with Australia, the activities mentioned in Article 5(4) (a) to (d) need not be preparatory or auxiliary in nature. 	<ul style="list-style-type: none"> India has chosen Option A in respect of all of its 93 CTAs. The language adopted in Article 13(2) (a) of MLI presume that activities listed in CTA deemed not to constitute PE whether or not that activity is preparatory or auxiliary. However, Article 13(2)(c) of MLI covers that the activities mentioned in subparagraph (a) and (b), thereby it mandates that activities listed under clause (a) to (d) of CTA should also be preparatory or auxiliary in nature

MLI – Article 14 – Splitting-up of Contracts

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none"> This Article seeks to avoid situation where contracts are split into multiple parts to avoid deemed PE provisions (e.g., building sites, construction or installation projects), which prescribe a time threshold. The Article inserts a new anti-contract splitting rule by providing that connected activities carried on by closely related persons at the same site or project during different periods of time that each exceed 30 days must be added to the aggregate period of time that a foreign enterprise has carried on activities at that site or project, for the purpose of determining the specific time period. 	<ul style="list-style-type: none"> India tax treaties with Australia, Canada, Spain, Denmark, Italy, Bulgaria, USA etc. specifically provides that time spent on other sites or projects is also to be considered while determining the threshold for PE. The Mumbai ITAT in the case of Valentine Maritime (Mauritius) Ltd has held that aggregation of time spent by it on various business activities would depend upon nature of activities, their inter-connection and interrelationship and whether these activities are required to be essentially regarded as a coherent whole in conjunction with each other 	<ul style="list-style-type: none"> India has neither made any reservation nor notified any countries in respect of this Article.

8 – Improving Dispute Resolution

Article 16-17

MLI – Article 16 – Mutual Agreement Procedure

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none">This Article provides for mandatory inclusion of MAP provisions in CTAs.	<ul style="list-style-type: none">Currently, none of India's tax treaties provides that case to be presented to the CA of either contracting jurisdiction.	<ul style="list-style-type: none">India has opted out of this Article by virtue of Article 16(5) which provides that the Contracting Jurisdiction will implement a bilateral notification or consultation process with the CA of the other Contracting Jurisdiction for cases presented by the taxpayers to its CA in which its competent authority does not consider the taxpayer's objection to be justified.

MLI – Article 17 – Corresponding Adjustments

Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none">This Article requires the tax administration of a jurisdiction to make a downward adjustment to the profits of a resident enterprise, to reflect a corresponding upward adjustment by the tax administration of the other jurisdiction to the profits of the other party (the associated enterprise) involved in the relevant transaction. This aims to avoid a situation of double taxation.	<ul style="list-style-type: none">Most of India's tax treaties contains this language. It is however not present in some treaties such as France, Germany, Italy, etc.Recently, the Government of India has issued a clarification that CBDT has decided to accept Transfer Pricing MAP and bilateral APA regardless of presence of paragraph 2 of Article 9 (Associated Enterprise)	<ul style="list-style-type: none">India has made a reservation to exclude the applicability of this provision to those CTAs that already contain a provision for corresponding adjustments.

9 – Arbitration

Article 18-26

MLI – Article 18 – 26


Provisions of MLI	India Position – Existing Treaty	India Position – MLI
<ul style="list-style-type: none">These articles aim to implement mandatory binding arbitration, reflecting the commitment by some countries to provide for mandatory binding arbitration in their bilateral tax treaties.This Part is optional and will apply only if a country notifies the Depositary of its intent to apply this Part with respect to its CTAs	<ul style="list-style-type: none">None of India's tax treaties currently has these provisions.	<ul style="list-style-type: none">India has not opted for these articles.

10 – Comparative Analysis

Comparative analysis of key impact of MLI positions of India and other countries signed MLI

Country	Anti-Abuse			Avoidance of PE			FTE & Treaty benefit	CA Rule for DRE	Mutual Agreement	
	Preamble	PPT	SLOB	Broad Agency PE	Activity exempt	Anti-Split			Article 9(2)	Arbitration
India	Yes	Yes	Yes	Yes	Option A	Yes	No	Yes	Yes	No
Australia	Yes + Additional Language	Yes + CA route	No	No	Option A	Yes	Yes (India excluded)	Yes	Yes	Yes
Canada	Yes	PPT as interim measure	No	No	No	No	No	No	Yes	Yes
Cyprus	Yes + Additional Language	Yes + CA route	No	No	No	No	No	No	Yes	No
France	Yes + Additional Language	Yes	No	Yes	Option B	No	No	No	Yes (via MLI)	Yes
Netherlands	Yes + Additional Language	Yes + CA route	No	No	Option A	Yes	Yes (India excluded)	Yes	Yes	Yes
Singapore	Yes + Additional Language	Yes + CA route	No	No	Option B	No	No	No	Yes	Yes
UK	Yes + Additional Language	Yes + CA route	No	No	Anti-Fragmentation	No	Yes	Yes	Yes	Yes

OECD Matching Database – Example – India - Australia

	Status as of 29 January 2020	Australia	India	–
	Signature MLI	07/06/2017	07/06/2017	Jump to entry into effect MLI
	Ratification instrument deposited	26/09/2018	25/06/2019	
	Mock-up date of ratification			–
Synthesised text	Status of List published by Australia	Definitive	Definitive	
	published by India	Synthesised text published by Australia	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 Entities		The last sentence of Article 4(1) would be replaced with the text described in Article 4(3)(e). A.4(3) would be replaced by Article 4(1).		
Article 5 Application for methods for Elimination of Double Taxation		Option C chosen by India 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(1) 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 apply with respect to A.13(4). 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(1) would apply and supersede the provisions of the agreement to the extent of incompatibility.		
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	Option A would apply with respect to A.5(4). Article 13(4) would apply with respect to A.5(4).		
	Article 14 Splitting-up of Contracts	Article 14(1) would apply and supersede the provisions of the agreement to the extent of incompatibility.		
	Article 15 Definition of a Person Closely Related to an Enterprise	Article 15 would apply.		
MAP	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 16(3) would apply. The second sentence of Article 16(3) would apply.		
	Article 17 Corresponding Adjustments	Article 17 would not apply.		
	Article 18 General applicability of Part VI (Arbitration)	Part VI would not apply.		
Part VI	Article 19 Mandatory Binding Arbitration			
	Article 23 Type of Arbitration Process			
	Article 24 Agreement on a Different Resolution			
Article 28 Reservations on the scope				

Q & A