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India released MLI synthesised text of the India-UAE DTAA

India's first synthesised text of DTAA to give effect to MLI

Background

- India has signed the Double Taxation Avoidance Agreement (DTAA) with UAE dated 29 April 1992. The DTAA has been amended twice vide Protocols signed on 26 March 2007 and 16 April 2012 respectively.
- Under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), more than 125 countries are collaborating to put an end to tax avoidance strategies that exploit gaps and mismatches in tax rules to avoid paying tax.
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is an outcome of BEPS Action Plan 15 of the OECD/G20 Inclusive Framework, which offers solutions for governments to plug loopholes in international tax treaties by transposing results from the BEPS project into bilateral tax treaties worldwide.
- Both India and UAE are signatories to the MLI.
- The synthesised text for the application of the India-UAE DTAA as modified by the MLI as released by India represents both countries' shared understanding of the modifications made to the DTAA by the MLI.

Synthesised text of the DTAA between India and UAE

Summary of the key changes to the DTAA pursuant to the MLI are as follows:

General Disclaimer

- The synthesised text was jointly prepared by the Competent Authorities of India and UAE, based on the positions taken by both countries as reflected in the Instrument of Ratification deposited with the OECD.
- The purpose of the synthesised text is to facilitate the understanding of the application of the MLI to the India-UAE DTAA.
- The applicable legal text would continue to be the authentic legal texts of the DTAA and the MLI as the synthesised text is not a source of law.
- The applicable provisions of the MLI with respect to the DTAA have been included in boxes throughout the synthesised text in the relevant DTAA Articles.
- Further, the terminology used in the DTAA has been inserted in the text of the MLI (such as changes from "Covered Tax Agreement" to "Agreement" and changes from "Contracting Jurisdiction" to "Contracting State"), to ease the comprehension of the MLI provisions.
- Similarly, changes have been made to parts of the MLI provisions that describe existing DTAA provisions by replacing such descriptive language with the Article and paragraph numbers or language of the existing DTAA provisions.

Disclaimer on entry into effect of the MLI provisions

The applicable MLI provisions take effect on different dates, depending on the types of taxes involved and on the choices made by India and UAE in their MLI positions, and are summarised below:

	India	UAE
Date of deposit of instruments of ratification	25 June 2019	29 May 2019
Entry into force of the MLI	1 October 2019	1 September 2019
MLI provisions are effective with respect to:		
Taxes withheld at source on amounts paid/credited to Non-residents	Where the event giving rise to such taxes occurs on or after 1 April 2020	Where the event giving rise to such taxes occurs on or after 1 January 2020
All other taxes levied by the respective country	For taxes levied with respect to taxable periods beginning on or after 1 April 2020	For taxes levied with respect to taxable periods beginning on or after 1 April 2020

Preamble to the DTAA

The preamble to the DTAA to include an express statement:

- that the intention is to eliminate double taxation with respect to taxes covered by the DTAA;
- 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 the DTAA for the indirect benefit of residents of third jurisdictions)

Associated Enterprises - Article 9

Article 17(1) of the MLI (dealing with corresponding adjustments) inserted in Article 9 to provide for appropriate adjustment in the other contracting state if there is any transfer pricing adjustment to total income of the associated enterprise (AE) in one contracting state. Corresponding adjustments have been specifically provided to form part of the mutual agreement procedures, if need be.

Mutual Agreement Procedure (MAP) – Article 27

The period of presenting the case by a resident to the competent authority of its resident state extended to three years in place of existing period of two years from the first notification of the action resulting in taxation not in accordance with the DTAA, based on both the countries positions on Article 16 (MAP) of the MLI.

Limitation of Benefits (LOB) – Article 29

- Article 7(1) of the MLI (dealing with prevention of treaty abuse) to replace the current provisions on LOB.
- The DTAA to now provide that a treaty benefit may be denied to an item of income if it is reasonable to conclude that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, 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 DTAA.

Observations

- The synthesised text of the India-UAE has been developed on the lines of the suggested approach contained in the OECD Guidance for the development of synthesised texts released in November 2018; e.g. the synthesised text is in the form of a single document reproducing the DTAA after integrating the effects of the Protocols, insertion of the applicable MLI provisions in boxes at the relevant provisions of the DTAA, insertion of a general and entry into force disclaimers, etc.
- The synthesised text will provide clarity on the application of the MLI on the DTAA and the dates on which the MLI provisions have effect in India and UAE.



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