



Global Business Tax Alert Sharp Insights

India signs multinational instrument for implementation of BEPS actions

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Backdrop

India has been an active participant in the G20 and OECD's Base Erosion and Profit Shifting [BEPS] project, and has implemented key BEPS actions requiring amendment to its tax laws like country-by-country reporting, limit on interest deduction, equalisation levy and a patent regime. It has also introduced the general anti-avoidance rule [GAAR].

The BEPS actions requiring amendment to tax treaties is now being implemented by way of a multilateral instrument.

Multilateral instrument

Pursuant to the approval of the Cabinet, India's Finance Minister on 7 June 2017 participated in the signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [multilateral instrument / MLI] at Paris. The MLI was signed by 68 countries including Australia, Canada, China, Cyprus, France, Germany, Hong Kong, Japan, Luxembourg, Netherlands, Singapore and the United Kingdom. Interestingly, the United States, has not signed the MLI, and Mauritius has committed to sign by 30 June 2017.

The MLI covers *inter alia*, two minimum standards agreed on BEPS, relating to prevention of treaty abuse (addressed to some extent by the Indian GAAR) and improvement of dispute resolution under the mutual agreement procedure [MAP]. The other key area covered by the MLI relates to avoidance of the permanent establishment [PE] status, which is a big area of dispute between taxpayers and Revenue authorities in India.

It is interesting to note that the MLI provides significant flexibility to signatories. For example, a country can decide which tax treaties will be covered by the MLI and which will be outside its purview. Moreover, each country can also opt out of a provision of the MLI (entirely or partly), provided it is not a minimum standard. At the signing of the MLI, India has given a provisional list of expected reservations and notifications. The provisional list indicates that India proposes to cover all existing comprehensive tax treaties under the MLI.

Conclusion

The MLI is a big step in the BEPS implementation process for India. The provisional list of expected reservations and notifications to be made by India, and of other countries, will provide insights on how Indian tax treaties will shape up in the BEPS world.

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