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# Multilateral Instrument [MLI] – BEPS tax treaty measures implementation

## What entails implementing BEPS

- Amendment to domestic tax laws of the countries;
- Amendment to the tax treaties signed by various countries;
- Amendments to the OECD Commentary; and
- Other administrative measures by the revenue authorities.

While changes to domestic tax laws and other administrative measures can be done by the respective countries on their own, changes in tax treaties involve detailed bilateral processes and negotiations between the countries. These bilateral processes are lengthy and could take over a decade if all prevalent bilateral tax treaties are to be amended.
On this front and in line with Action Plan 15, more than 100 jurisdictions have concluded negotiations on a Multilateral Instrument (MLI) that will swiftly implement a series of measures developed in the course of the work on BEPS and enable amendments in bilateral tax treaties.

The final version of the negotiated MLI as adopted by more than 100 jurisdictions has now been released. A signing ceremony for MLI is proposed to be held in June 2017 in Paris, pursuant to which the provisions of MLI would become operational.

## What MLI can do

MLI is a convention which will be signed by several countries and have the impact of changing the bilateral tax treaties signed by these countries.

Address the practical difficulty of changing bilateral tax treaties in a time-bound manner and swiftly transpose results from the OECD/ G20 BEPS Action Plans into more than 2,000 tax treaties worldwide.

A complex instrument divided into VII Parts and running into 39 articles, which once signed and effective, will modify the existing bilateral tax treaties of the countries signatory to the MLI. Certain articles of MLI will offer option of provisions for each country to select for adopting in its tax treaties.

## BEPS – Minimum standards

Minimum standards, which must be adopted by countries:

- Treaty abuse provisions (prevent treaty abuse; PPT and/or LOB clause)
- Country-by-Country Reporting [CbCR];
- Peer review process to address harmful tax practices; and
- Effective Mutual Agreement Procedure [MAP].

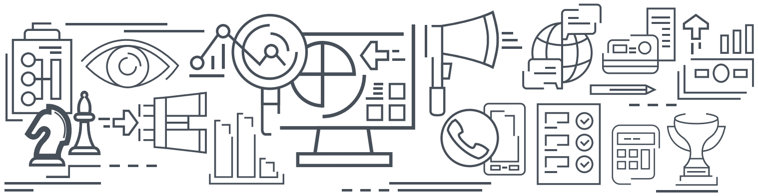
# India - BEPS Implementation

India is a member of G20 and actively engaged in the BEPS project. Implementation status of BEPS in India is as under:

| | |
|---|---|
| Action Plan#1 – Digital Economy | Equalization levy |
| Action Plan#2 – Hybrid mismatches | MLI* |
| Action Plan#3 – CFC Rules | No |
| Action Plan#4 – Interest deduction | No |
| Action Plan#5 – Harmful tax practices | Patent Box Regime |
| Action Plan#6 – Prevent treaty abuse | MLI* |
| Action Plan#7 – Artificial Avoidance of PE | MLI* |
| Action Plan#8,9,10 – Intangibles, Risks and capital & High risk transactions | Conceptually yes |
| Action Plan#11 – Data collection & analysis | No |
| Action Plan#12 – Disclosure of aggressive tax planning | No |
| Action Plan#13 – TP documentation & CbC reporting | Yes |
| Action Plan#14 – Dispute resolution mechanism | MLI* |

*To the extent agreed by the participating countries and subject to reservations, if any

**MLI will help address the long-drawn negotiation processes for changing other bilateral tax treaties for implementing the G20 BEPS measures.**



# How to read tax treaties post MLI

Once MLI becomes operational, one will have to ensure that the treaty provisions are not read on a stand-alone basis but with the corresponding provisions of MLI along with related country reservations.

# What can be done at this stage

**BEPS assessment – evaluate**

- Implications of availability of master / local file date (CbCR)
- Whether the non-resident entity has a PE in India
- Is the principle purpose of the structure availing treaty benefit (PPT)
- Is there is need to restructure
- Is the place of economic activity and booking profits same