Tax Hotline

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INDIA'S MLI POSITIONS: IMPACT ON AVAILING TREATY BENEFITS

India recently signed a multilateral treaty, in furtherance of the BEPS project, which is likely to have huge ramifications for businesses operating in India and foreign investors that seek to avail tax benefits under India's double tax avoidance agreements. The BEPS Project, launched during the 2008 financial crisis is aimed at plugging holes in the international tax treaty framework and to ensure that profits are taxed where value is created through economic activities carried out in that country.

On June 7, 2017, 68 developed and developing countries signed the "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting", otherwise referred to as the Multilateral Instrument ("**MLI**"), in Paris. Being the harbinger of a new regime in international taxation, the impact will be significant and the MLI will irreversibly change the manner in which future investments into India are structured. Specifically, the provisions of the MLI require mandatory amendment of existing bilateral tax treaties to ensure certain minimum standards. The most important one being the denial of treaty benefits if obtaining those tax benefits was one of the purposes of undertaking a certain transaction or arrangement.

From a business point of view, this could lead to huge difficulties based on the manner of application of such a subjective test. Further, while these provisions raise the level of uncertainty when it comes to structuring business operations, their applicability alongside the recently introduced Indian General Anti Avoidance Rules may reduce ease of doing business due to the ambiguity on whether both provisions could potentially be applied at the same time or to the same transaction.

Though the MLI in general provides much needed clarity in many respects from the perspective of the respective governments, it is clear that the lack of taxpayer involvement in the discussions has resulted in certain structural lacunae in the proposed MLI system from the taxpayer's perspective. For instance, the taxpayer has limited rights, visibility or involvement in the MAP proceedings between states, although an adverse decision is likely to affect them the most.

While the signatories to the MLI include strategically important treaty partners such as United Kingdom, Canada, Germany, India, Italy and Russia, significant jurisdictions such as the United States, and Brazil have not signed the MLI. Germany while signing the MLI has not made it applicable to the India – Germany Double Tax Avoidance Agreement.Further Mauritius and a few other countries have signified an intent to sign the MLI in the near future. Ultimately, this has resulted in over 1100 treaties being potentially subject to change and a thorough understanding of the impact of MLI on conduct of business is essential not only for future operations and investments but also to re-assess the availability of treaty benefits for existing arrangements which may derive a benefit in the post MLI regime.

This research paper analyzes the MLI positions adopted by India that determine the general applicability of MLI to its tax treaties, including reservations, and assesses its impact on the ease of availing treaty benefits in the post MLI era under treaties signed with significant treaty partners mentioned above, based on their respective MLI positions/choices.

To access the research paper 'India's MLI Positions: Impact on Availing Treaty Benefits', please click here.

– Rajesh Simhan
You can direct your queries or comments to the authors

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