

India confirms intent to sign BEPS multilateral instrument curbing tax avoidance

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The Indian Union Cabinet today approved India’s signing of the multilateral instrument (MLI) to implement the tax treaty measures in the OECD/G20 base erosion profit shifting (BEPS) action plan. A signing ceremony will be held in Paris this June.

The Cabinet’s action was expected given India’s active participation in the BEPs project as well as in the drafting of the MLI.

Though India has recently amended tax treaties that the government saw as a concern, namely those with Mauritius, Singapore, and Cyprus, and implemented domestic general anti-avoidance rules (GAAR), the MLI remains important to India as a means to prevent tax treaty abuse, including artificial avoidance of permanent establishment status. The confirmation by the Indian government of their intention to sign reiterates India’s stance towards curbing base erosion internationally.

The OECD devised the BEPS Action Plan to tackle use of aggressive tax planning strategies used by multinationals that artificially shift profits to low tax jurisdictions with limited or no economic activity. BEPS Action Plan 15 envisages the development of the MLI to implement the tax treaty related measures under the BEPS Action Plan.

The MLI is a landmark development as it seeks to amend over 3000 bilateral tax treaties. In comparison to protocols, which directly amend the text of the treaties, the MLI is intended to apply alongside existing tax treaties, modifying their application to the extent necessary to implement the BEPS related measures.

A crucial aspect of the MLI is that it works on the principle of reciprocity. In other words, any provision under MLI would apply to a bilateral tax agreement between

two countries/jurisdictions only if both parties consent to it. To effectuate this reciprocity, the MLI permits for reservations against certain provisions in the MLI (except the ones which are related to implementation of BEPS minimum standards). Generally, if one party makes a reservation against any provision in the MLI, then it will apply symmetrically between the reserving party and all other parties.

For the MLI to come into force, international law pertaining to multilateral treaties must be complied with. The first step is signature, followed by ratification/acceptance/approval by each party, depending upon their respective domestic law requirements.

In other words, signature is only the first step towards expressing consent to be bound by the MLI.

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