Executive summary

On 7 June 2017, India and 67 other jurisdictions signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI) during a signing ceremony hosted by the Organisation for Economic Co-operation and Development (OECD) in Paris.¹

At the time of signature, India submitted a list of 93 tax treaties entered into by India and other jurisdictions that India would like to designate as Covered Tax Agreements (CTAs), i.e., tax treaties to be amended through the MLI. Together with the list of CTAs, India also submitted a provisional list of reservations and notifications (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI.

 Particularly, India has chosen to additionally apply the simplified limitation of benefits (LOB) rule which provides an objective determination to deny treaty benefits, along with the mandatory minimum standard of the principal purpose test (PPT) to counter treaty shopping. India has also adopted the minimum standards prescribed under dispute resolution through mutual agreement procedure (MAP) to permit correlative adjustment arising on account of primary adjustment, to adopt a minimum time limit of three years for providing MAP access and to confer an obligation on competent authorities to resolve treaty interpretation and double taxation issues. However, consistent with its earlier stance, India has not elected
mandatory binding arbitration. On permanent establishment (PE) related provisions, India has opted for a wider scope of dependent agency PE to include activities of an agent playing a principal role in concluding contracts even though such contracts are formalized abroad or such activities of an agent who claims to be independent even though he is working exclusively or almost exclusively for closely-related enterprises (CREs). Furthermore, India adopts that the specific activity exemption from creating a PE is available, subject to fulfilment of preparatory or auxiliary conditions. Additionally, while opting for substitution of the place of effective management rule by the competent authority rule for resolving the issue of dual residency of non-individuals, India has not opted to implement changes related to the granting of treaty benefits to fiscally transparent entities.

Detailed discussion

Background

On 5 October 2015, the OECD released its final report on developing a multilateral instrument to modify bilateral tax treaties under its Base Erosion and Profit Shifting (BEPS) Action Plan (Action 15). This report was released in a package that included final reports on all 15 BEPS Actions. On 24 November 2016, the OECD released the text of the MLI and explanatory notes. Many of the provisions of the MLI overlap with provisions found in CTAs. Where the provisions of the MLI may conflict with existing provisions covering the same subject matter, this conflict is addressed through one or more compatibility clauses which may, for example, describe the existing provisions which the MLI is intended to supersede, as well as the effect on CTAs that do not contain a provision of the same type.

Contracting Jurisdictions have the right to reserve certain parts of the MLI (opt-out) and to have these specific articles not apply to their tax treaties.

The different types of provisions

The MLI contains four types of provisions. Depending on the type of provision, the interaction with CTAs varies. A provision can have one of the following formulations: (i) “in place of”; (ii) “applies to”; (iii) “in the absence of”; and (iv) “in place of or in the absence of.” A provision that applies “in place of” an existing provision is intended “to replace an existing provision” if one exists, and is not intended to apply if no existing provision exists. A provision that “applies to” provisions of a CTA is intended “to change the application of an existing provision without replacing it,” and therefore may only apply if there is an existing provision. A provision that applies “in the absence of” provisions of a CTA is intended “to add a provision” if one does not already exist. A provision that applies “in place of or in the absence of” provisions of a CTA is intended “to add a provision” if one does not already exist. The definitive MLI positions for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI.

Structure of the MLI

Recognizing the complexity of designing a general instrument that applies to the CTAs and to the specific provisions included in bilateral tax treaties, the MLI provides flexibility for Contracting Jurisdictions to implement (parts of) the MLI based on their needs.
A provision that applies “in place of or in the absence of” provisions of a CTA is intended “to replace an existing provision or to add a provision.” This type of provision will apply in all cases in which all the parties to a CTA have not reserved their right for the entirety of an article to apply to its CTAs. If all Contracting Jurisdictions notify the existence of an existing provision, that provision will be replaced by the provision of the MLI to the extent described in the relevant compatibility clause. Where the Contracting Jurisdictions do not notify the existence of a provision, the provision of the MLI will still apply. If there is a relevant existing provision which has not been notified by all Contracting Jurisdictions, the provision of the MLI will prevail over that existing provision, superseding it to the extent that it is incompatible with the relevant provision of the MLI if there is a conflict between the two provisions. Lastly, if there is no existing provision, the provision of the MLI will, in effect, be added to the CTA.

India's Covered Tax Agreements
India has submitted a list of 93 tax treaties that it wishes to designate as CTAs, i.e., to be amended through the MLI. See Appendix I for the full list.

Accordingly, India has chosen to include all of the jurisdictions that form part of India's tax treaty network. Some of the countries in India's CTA list, however, have not yet signed the MLI (for example, Brazil, and the United States (US)).

MLI provisions

Hybrid mismatches
Part II of the MLI (Articles 3 to 5) introduces provisions which aim to neutralize certain of the effects of hybrid mismatch arrangements based on the recommendations made in the BEPS Action 2 and 6 final reports released in October 2015. The provisions cover hybrid mismatches related to transparent entities, dual resident entities and elimination of double taxation. These provisions are all not minimum standard provisions and therefore Contracting Jurisdictions have the right to opt to not apply these provisions to their CTAs.

Article 3 - Transparent entities
This provision addresses the situation of hybrid mismatches as a result of entities that one or both Contracting Jurisdictions treat as wholly or partly transparent for tax purposes. Under Article 3(1), income derived by or through a transparent entity shall only be considered income of a resident to the extent that the income is treated, for purposes of taxation by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction. The provision is not a minimum standard and, hence, the application of the same can be opted out.

India has reserved its right for non-applicability of Article 3 in its entirety.

India's tax treaties do not generally contain a provision on treatment of transparent entities. India has continued to maintain status quo and a strict stance on treatment of transparent entities i.e., a transparent entity which is not “liable to tax” in the jurisdiction of its formation may not qualify as a resident to avail treaty benefits. Thus, treaty entitlement for transparent entities will continue to be a challenge in India and other issues like the application of treaty provisions to investors, credit of foreign taxes, double taxation, as well as double non-taxation, remain ambiguous.

Article 4 - Dual resident entities
Article 4 modifies the rules for determining the treaty residency of a person other than an individual that is a resident of more than one Contracting Jurisdiction (dual resident entity or DRE). Under this provision, treaty residency of a dual resident entity shall be determined by a MAP between Contracting Jurisdictions taking into account its Place of Effective Management (POEM), place of incorporation or constitution, and any other relevant factors. It also provides that in the absence of any agreement between the jurisdictions, a DRE is not entitled to any relief or exemption from tax under the treaty except as may be agreed upon by the Contracting Jurisdictions.

India has not provided any reservation in respect of applicability of Article 4. Accordingly, India chooses to apply this provision and has notified 91 CTAs wherein treaty residence of a DRE will be determined on the basis of MAP. This MLI provision will be made applicable only if the other Contracting Jurisdiction agrees to apply this article. Presently, a majority of India's tax treaties use the POEM test as a tie-breaker rule to determine treaty residence of a DRE.

Article 5 - Application of methods for elimination of double taxation
Article 5 includes three options for Contracting Jurisdictions for the methods of eliminating double taxation arising due to the resident state providing relief under the exemption method in respect of income that is not taxed in the source state.
India has made a reservation on non-applicability of Article 5 for all of its tax treaties. In general, most of India's tax treaties follow the credit method and, hence, the situation of double non-taxation on account of the exemption method is, generally, unlikely in the Indian context.

**Treaty abuse**

Part III of the MLI (Articles 6 to 13) contains six provisions related to the prevention of treaty abuse, which correspond to changes proposed in the BEPS Action 6 final report (*Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*). In particular, the report contains provisions relating to the so-called “minimum standard” aimed at ensuring a minimum level of protection against treaty shopping (Article 6 and Article 7 of the MLI).

**Article 6 – Purpose of a CTA**

As one of the minimum standards to address treaty shopping scenarios, the Action 6 final report requires Contracting Jurisdictions to amend the title and preamble of the tax treaties to express the common intention of avoiding double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

Adoption of the preamble of the MLI is a mandatory requirement and, as a result, India's tax treaties are likely to get modified to include the text of the preamble. Furthermore, countries were given an option to select the additional statement in the preamble, which provided that the treaty object can also be to develop economic relationships and enhance cooperation in tax matters. India has not exercised this option.

**Article 7 – Prevention of treaty abuse**

This article contains the provisions to be included in a CTA to prevent treaty abuse. As concluded in the Action 6 final report, the prevention of treaty abuse should be addressed in one of the following ways: (i) a combined approach consisting of an LOB provision and a PPT; (ii) a PPT alone; or (iii) an LOB provision, supplemented by specific rules targeting conduit financing arrangements. With respect to the LOB provision, the Action 6 final report provided for the option of including a detailed or a simplified version.

Given that a PPT is the only way that a Contracting Jurisdiction can satisfy the minimum standard on its own, it is presented as the default option in Article 7. Parties are allowed to supplement the PPT by electing to also apply a simplified LOB provision. A simplified LOB provision will apply if both jurisdictions to a CTA agree for its inclusion or when one jurisdiction chooses to apply the simplified LOB and the other jurisdiction agrees to its asymmetrical or symmetrical application.

Specifically, Article 7 articulates the PPT which denies treaty benefits when considering all relevant facts and circumstances, obtaining that benefit is one of the principal purposes for entering into a specific transaction or arrangement that resulted directly or indirectly in that benefit, unless if granting that benefit is not contrary to the object and purpose of the relevant provisions of the CTA.

India has not provided any reservation on the applicability of the PPT. As adoption of the PPT is a minimum standard it will be applicable to all of India's tax treaties with other signatories of the MLI. Where the other Contracting Jurisdiction, has adopted PPT as an interim measure, India may bilaterally negotiate to adopt the detailed LOB along with other permissible measures in this respect to meet the minimum standard.

India has notified to adopt the optional measure of the simplified LOB for all its comprehensive CTAs, in addition to the PPT, for prevention of treaty abuse. India's CTAs may, accordingly, get amended to include the simplified LOB rule if the other Contracting Jurisdiction also agrees to apply the simplified LOB rule or agrees to asymmetrically or symmetrically apply the simplified LOB rule. Once adopted, a taxpayer will have to satisfy the simplified LOB rule, in addition to the PPT, to avail treaty benefits. Many of India's existing tax treaties do not contain the simplified LOB rule or the existing simplified LOB rule is not as detailed as the MLI provisions.

**Article 8 – Dividend transfer transactions**

Article 8 of the MLI stipulates satisfaction of the ownership condition throughout a minimum holding period of 365 days in order to claim exemption or lower withholding tax rate on dividend income. Contracting Jurisdictions can bilaterally agree to include the withholding rate and certain ownership threshold in their tax treaties for applying this article.

India has reserved its right for non-applicability of Article 8 in respect of its tax treaty with Portugal (as it already has a 24 month holding period condition) and has notified 21 tax treaties where a holding period of 365 days is proposed to be applicable in order to obtain the benefit of a concessional tax rate on dividends.
Article 8 of the MLI may not significantly impact the Indian context as, under the Indian Tax Laws (ITL), Dividend Distribution Tax (DDT) is levied on the company distributing dividends and, consequently, exempt in the hands of the shareholder. It is generally understood that the tax treaty does not control DDT liability.

Article 9 – Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property

Article 9 of the MLI provides for indirect transfer taxation to tax the capital gains arising on account of alienation of shares/comparable interest of companies/other entities (such as partnership or trust) that derive more than a certain percent of their value (value threshold) from immovable properties. The taxation rights are provided to the country where such property is situated (i.e., the source state).

Article 9 provides for two alternatives. Alternative 1 specifies that where the value threshold is met at any time during the 365 days preceding the alienation (look-back period), the capital gains from the sale of shares or comparable interests shall be taxable in the source country. Countries can bilaterally negotiate the value threshold in their tax treaties. Alternative 2 is similar to Alternative 1 and, additionally, fixes a normative value threshold of more than 50% (i.e., share or comparable interest derives more than 50% of its value directly or indirectly from immovable property) for trigger of source taxation in this behalf.

India has opted for Alternative 2 in respect of all its CTAs. India has also notified 71 CTAs which contain a provision described in Alternative 1 viz., the relevant clause of the tax treaties where either the value threshold and/or look-back period of 365 days is not available.

India seems to have made a policy choice of adopting a value threshold of 50% and a look-back period of 365 days as its default option. Alternative 2 will get incorporated in India’s CTAs if other Contracting Jurisdictions opt for the same alternative.

Article 10 – Anti-abuse rule for PE situated in third jurisdictions

Article 10 contains the anti-abuse rule for PEs situated in third jurisdictions, the so-called “triangular provision.” The article provides that treaty benefits will be denied if an item of income derived by a treaty resident and attributable to a PE in a third jurisdiction, is exempt from tax in the residence state and the tax in the PE jurisdiction is less than 60% of the tax that would be imposed in the residence state if the PE were located there. The article makes an exception for cases where the income is derived in connection to or incidental to an active trade or business carried out through the PE, and allows discretionary relief to be requested when treaty benefits are denied under this article.

India has not made any reservation or notified any of its CTAs under Article 10. Thus in terms of the MLI, Article 10 will apply to all of India’s CTAs unless specific reservations have been made by the other Contracting Jurisdiction.

Article 11 – Application of tax agreements to restrict a party’s right to tax its own residents

Article 11 contains a so-called “saving clause” rule that preserves a Party’s right to tax its own residents. India has not made any reservation or notified any of its CTAs under Article 11. Thus in terms of the MLI, Article 11 will apply to all of India’s CTAs unless specific reservations have been made by the other Contracting Jurisdiction.

Avoidance of PE status

Part IV of the MLI (Articles 12 to 15) describes the mechanism by which the PE definition in existing tax treaties may be amended pursuant to the BEPS Action 7 final report to prevent the artificial avoidance of PE status through:

(i) commissioner arrangements and similar strategies (Article 12);
(ii) the specific activity exemptions (Article 13); and
(iii) the splitting-up of contracts (Article 14). Article 15 of the MLI provides the definition of the term “closely related to an enterprise,” which is used in Articles 12 through 14. Articles 12-15 however, do not change the rules on the attribution of profits to PE.

Article 12 – Artificial avoidance of PE status through commissioner arrangements and similar strategies

Article 12 sets out how the changes to the PE article of the OECD Model Tax Convention (MTC) can be incorporated in the tax treaties specified by the parties to address the artificial avoidance of PE status through commissioner arrangements and similar strategies.

The MLI provides for a broader dependent agency PE rule and extends the rule to, in addition to the person having the authority to conclude contracts, persons who habitually play the principal role leading to the conclusion of contracts that are routinely concluded without material modifications by the enterprise.
The activities described, however, will not create a PE if carried on by certain independent agents. As per the MLI provisions, a person cannot be considered an independent agent if he acts exclusively or almost exclusively on behalf of CREs.

Article 12 is not a minimum standard and the MLI gives an option to countries to reserve the right not to apply this article in its entirety. Modification of a tax treaty is subject to adoption, as well notification of the provision by the other Contracting Jurisdiction.

India has not made any reservation on Article 12 and has notified all its 93 tax treaties to adopt the above provisions of broader agency PE rule.

Article 12 seeks to replace the agency PE provisions relating to the agent's activity dealing with the authority to conclude contracts. Other activities listed in tax treaties to trigger agency PE (like maintenance of stock and delivery, manufacturing and processing, securing orders etc.) remain unaffected by the MLI. Independent agent exclusion is made stricter under the MLI when compared to various Indian tax treaties by denying exclusion to the agents who work exclusively for an enterprise and its CREs.

Article 13 – Artificial avoidance of PE status through the specific activity exemptions

Article 13 provides two options for modifying preparatory and auxiliary PE exemption in line with the Action 7 final report.

- Option A provides that listed activities would qualify for a specific activity exemption only if such activity qualifies to be preparatory or auxiliary in character.
- Option B allows countries to retain the automatic exemption to listed activities, irrespective of the same being preparatory or auxiliary. This Option considers that these specifically listed activities are intrinsically preparatory or auxiliary and, therefore, there should be no need to subject these activities to the preparatory or auxiliary condition.

Independent of the above, this article, further, contains a provision for adopting an anti-fragmentation rule which denies a specific activity exemption where the activities carried out by the foreign enterprise along with its CREs, at the same or another place, go beyond the preparatory or auxiliary nature.

India has chosen option A and has notified all its 93 CTAs to apply the same.

On the anti-fragmentation rule, India has not made any reservation for its application. Modification of a tax treaty is subject to adoption, as well notification of the provision by the other Contracting Jurisdiction.

Certain countries like Australia, Italy, Japan, Russia, and South Africa, have opted for option A and have included their CTAs with India in their notification. Hence, these tax treaties may stand modified, imposing additional conditions for activities being preparatory or auxiliary in nature to qualify for PE exclusion. Whereas, certain countries such as Belgium, France, Ireland, Luxembourg, and Singapore, have opted for option B and, hence, may remain unchanged due to the absence of compatibility.

Article 14 – Splitting-up of contracts

Article 14 contains a provision for determining whether a specific time threshold as given in a tax treaty (for construction/installation/supervisory or any PE provision in relation to similar activities/projects which are based on a time threshold) is exceeded. The article provides for aggregation of time spent on connected activities by CREs at the same project to determine the threshold.

The provision is optional and does not apply where either of the Contracting Jurisdictions has made a reservation on the application of article.

India has neither made any reservation nor notified any CTAs in respect of the same.

In respect of India's CTAs with Contracting Jurisdictions that have made a reservation, Article 14 would not have any impact (Illustratively, Canada, Japan, and the United Kingdom). In respect of CTAs where the other Contracting Jurisdictions have not made a reservation, the existing provision of India's CTAs may get superseded by Article 14(1) to the extent incompatible.

Dispute resolution

Article 16 – MAP

Part V of the MLI (Articles 16 and 17) introduces provisions which aim to introduce the minimum standards for improving dispute resolution (the BEPS Action 14 minimum standards) and a number of complementing best practices. As part of the MLI, India has ensured adoption of minimum standards as follows:
India has reserved its right for not adopting the modified provisions on the basis that it would meet the minimum standard by allowing MAP access in the resident state and by implementing a bilateral notification process. Furthermore, the MLI requires that MAP access should be allowed in a case where MAP application is presented within three years of the first notification of the action resulting in taxation not in accordance with a tax treaty. This has been implemented by India which has notified CTAs that provide a lower period of two years for presenting a MAP case and CTAs that have a minimum period of three years. The notification ensures that all of India's post MLI tax treaties will provide a minimum time limit of three years for MAP access.

In terms of the MLI, competent authorities of both the states need to endeavor to resolve a case under MAP if they are not able to arrive at a satisfactory solution unilaterally. India has notified its CTAs that do not have a comparable provision to meet this minimum standard. MAP agreements are to be implemented notwithstanding any time limits under domestic laws. Most existing tax treaties of India have a provision which requires implementation of the MAP resolution irrespective of time limits in the domestic laws. India has provided a list of seven tax treaties where such a provision does not exist. Post the MLI, the notified tax treaties will also have this minimum standard if the comparable notification is made by the other Contracting Jurisdiction.

The MLI further confers an obligation on the competent authorities to endeavor to resolve any potential difficulties or doubts related to the implementation or application of tax treaties under MAP and provides an option for competent authorities to consult on ways to eliminate double taxation in cases not provided for in the CTA. India has adopted this provision and has notified the CTAs without comparable provisions.

**Article 17 – Corresponding adjustments**

One of the minimum standards under dispute resolution was that Contracting Jurisdictions were to provide MAP access in transfer pricing (TP) cases. As a complementing best practice, the MLI suggested that countries include the enabling provision of Article 9(2) of the OECD MTC in its CTAs, which provides that where a TP adjustment is made in one of the states, the other state shall provide corresponding adjustment.

Alternatively, as a minimum standard under dispute resolution, countries are required to provide access to MAP in TP cases. This obligation is not conditional on the existence of the enabling provision of Article 9(2) in CTAs, India has opted to include the enabling Article 9(2) in its CTAs and this makes adoption of bilateral advance pricing agreements a possibility for India’s CTAs if a similar position is adopted by the other Contracting Jurisdictions.

**Mandatory binding arbitration**

Part VI of the MLI (Articles 18 to 26) enables countries to include mandatory binding treaty arbitration (MBTA) in their CTAs in accordance with the special procedures provided by the MLI.

Unlike the other articles of the MLI, Part VI applies only between jurisdictions that expressly choose to apply Part VI with respect to their CTAs. Of the 68 jurisdictions that signed the MLI on 7 June, 25 opted in for mandatory binding arbitration.

India at the moment has not opted in for mandatory binding arbitration.

**Timing**

The MLI will enter into force after five jurisdictions have deposited their instrument of ratification, acceptance or approval of the MLI.

The MLI shall apply to a specific CTA after all parties to that CTA have ratified the MLI. The MLI provisions will generally have different effective dates in a CTA.

In relation to provisions relating to withholding taxes, the date of entry into effect is the first day of the next calendar year from the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to a CTA. The MLI gives an option to use the term “taxable year” in place of “calendar year.”

With respect to all other taxes levied by a Contracting Jurisdiction, the first taxes for which the MLI provisions will apply are those which are levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months from the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to a tax treaty.

Similar dates will be relevant when a country makes a withdrawal/replacement reservation or a new notification of a CTA. MAP provisions of the MLI will enter into force for cases presented to the competent authority on or after the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to the CTA.
India has chosen to substitute “taxable period” in place of “calendar year.” In respect of the date of “entry into effect” of the MLI provisions, India has reserved that it will apply 30 days after the date of receipt by the OECD of the latest notification by each of the Contracting Jurisdictions stating that it has completed its internal procedures with respect to the CTAs.

Implications

India wishes to apply MLI provisions to 93 tax treaties, i.e., the vast majority of those which make up its tax treaty network. This certainly constitutes an unprecedented moment for the Indian international taxation and implementation of the treaty-based BEPS recommendations in India.

The provisional reservations and notifications made by India at the MLI signing ceremony seem quite balanced and consistent with the double tax treaty negotiation policies followed by India during the past years.

The signing of the MLI is a defining moment in international tax policy, impacting over 68 countries. It is also another milestone for India, as well as other countries, in the implementation of the treaty-based BEPS recommendations.

India's involvement in the first signing ceremony of the MLI indicates India's commitment and proactive approach in combating BEPS. Many of India's key tax treaty partners have signed the MLI. These include Australia, Belgium, Canada, Cyprus, Finland, France, Germany, Ireland, Japan, Luxembourg, the Netherlands, Singapore, South Africa and the United Kingdom. Key countries that have so far not signed the MLI include Brazil, Malaysia, Thailand and the US. Since the provisions of the MLI will enter into force with respect to a specific CTA only after both the parties have deposited their instruments of ratification and a specified time has elapsed, it is possible that the changes made as a result of being a party to the MLI will become effective during 2019, though some tax treaties may be affected as early as sometime in 2018. However, whether a CTA includes the MLI provisions or not will depend on the stand taken by the other Contracting Jurisdiction. Furthermore, the provisional list submitted by Contracting Jurisdictions during the signing ceremony can also undergo a change at the time of ratification.

India's overall approach seems to be to adopt wider measures which are tax revenue friendly and, hence, will limit the treaty applicability or make anti-avoidance provisions stricter.

It may be noted that the MLI has been signed by India in terms of the authority provided to the Union Executive and there is no requirement for further approval of the Parliament for ratifying the MLI. In the course of time, the OECD is likely to provide an updated list of countries positions and final provisions on its website. Also, the countries may opt to furnish the consolidated version of the modified CTAs.

Endnotes

1. For more background on the global significance of the MLI signature, see EY Global Tax Alert, *68 jurisdictions sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 7 June 2017.

2. See EY Global Tax Alert, *OECD releases multilateral instrument to implement treaty related BEPS measures on hybrid mismatch arrangements, treaty abuse, permanent establishment status and dispute resolution*, dated 2 December 2016, for a more detailed analysis of the MLI related BEPS measures.

3. Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and Uruguay.

5. For more detail on the MLI Positions taken by the signing jurisdictions on 7 June 2017, see EY Global Tax Alert, *Signing by 68 jurisdictions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS highlights impacts for business to consider*, dated 14 June 2017.

6. Except for a few tax treaties such as India-UK, India-US.

7. Exceptions being Greece and Libya.

8. Many Indian tax treaties (about 36) has the PPT and a list of these tax treaties is provided as part of the MLI notification.

9. Bangladesh, Belarus, Canada, Croatia, Denmark, Italy, Lithuania, Montenegro, Nepal, Oman, Philippines, Qatar, Serbia, Singapore, Slovakia, Slovenia, Syria, Tajikistan, Ukraine, the United States and Zambia.

10. Belgium, Canada, Italy and the United Arab Emirates.

11. To illustrate, India’s tax treaty with Germany does not have Article 9(2). However, as Germany has not notified its tax treaty with India, Article 9(2) may not apply to the India-Germany tax treaty. As another example, Brazil has not signed the MLI. India’s tax treaty with Brazil presently does not have Article 9(2) and India has not reserved its right for not including Article 17 in respect of its tax treaty with Brazil. Consequently, in terms of the MLI provisions Article 9(2) may not be applicable to the India-Brazil tax treaty.

12. Andorra, Australia, Austria, Belgium, Canada, Fiji, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, New Zealand, Portugal, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

13. This is subject to certain exceptions of cases not eligible for MAP under the tax treaty prior to its modification by the MLI.

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Appendix I - List of Countries that India wishes to designate as CTAs

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