



## India signs the Multilateral Convention – Provisional List of reservations and notifications released

68 countries, including India and several of its important treaty partners, signed the Multilateral Convention at a ceremony in Paris yesterday. A provisional list of expected reservations and notifications by each of the signatories was also released.

Set out below is a brief overview of India's provisional list of 'Covered Tax Agreements' (i.e. treaties to whom the Multilateral Convention will apply) and the scope of the key reservations and notifications made by it. These will be finalised at the time of the submission of the instrument of ratification by India.

### Background:

The Multilateral Convention is intended to provide a mechanism to modify the over 3000 bilateral treaties that exist in the world today. Except for some provisions relating to mandatory arbitration, it codifies changes that were agreed to as part of the Final Base Erosion and Profit Shifting Project (BEPS) measures released in October 2015. The Convention was developed by an *ad hoc* group constituted in February 2015, which saw participation from over 99 countries as equal members. India was also a party to this *ad hoc* group.

India has been an active participant in the overall BEPS Project and considers several of the final BEPS measures as supporting its long-standing preference for source country taxation. The incorporation of several of these measures as part of the Multilateral Convention will therefore be of significant relevance in an Indian context.



## **Scope of the Multilateral Instrument:**

The BEPS project led to a series of measures being developed across several actions such as the digital economy, treaty abuse, design of Controlled Foreign Company Rules, intangibles, country-by-country reporting, preventing artificial avoidance of Permanent Establishment (PE) status, improving dispute resolution etc. Several of these measures required implementation through changes in domestic law. As regards those measures which required implementation through changes to bilateral treaties, it was felt that a Multilateral Convention that modified the existing bilateral treaty network would be preferable as it would ensure speed and consistency in implementation.

Accordingly, the Multilateral Convention incorporates treaty related measures identified as part of the final BEPS measures in relation to:

- Neutralising the effects of hybrid mismatch arrangements (Action 2)
- Preventing the Granting of Treaty Benefits in Inappropriate Circumstances (Action 6)
- Preventing the Artificial Avoidance of Permanent Establishment Status (Action 7)
- Making Dispute Resolution Mechanisms more effective (Action 14)

## **Relevance of reservations and notifications:**

The Multilateral Convention contains several provisions that provide flexibility to countries. This flexibility comes in the following forms:

- A country may choose not to become a signatory to the Multilateral convention. In this case, none of its bilateral treaties will be modified.
- Having signed on to the Multilateral Convention, countries have the flexibility to choose their bilateral treaties to which the convention is to apply. This is to be done by making a notification to the Secretary General of the OECD i.e. the Depositary. The Multilateral Convention will apply to modify a treaty, only if both parties to the treaty have notified the treaty under this provision.
- The convention also contemplates opt-outs in respect of certain provisions. However, where a provision reflects a 'minimum standard', opting out is generally not possible unless the country's treaties already meet those minimum standards (E.g. modification to the preamble to a bilateral treaty that it is not intended to facilitate double non-taxation is a minimum standard, and cannot be opted out unless the existing treaty preamble already contains such language). However, where a provision does not reflect a minimum standard, a country has the flexibility to opt-out entirely by making a reservation (for e.g. the provision relating to treaty benefits for transparent entities is not a minimum standard and thus, countries can therefore opt out entirely)
- Where the Multilateral convention has several alternative ways to meet a minimum standard, countries may choose to adopt any of them. Similarly, certain provisions (such as the binding arbitration provision) are optional and will apply only if the parties to a bilateral treaty affirmatively choose to apply them.



## **Impact of India's reservations and notifications – a brief overview:**

### **(i) Current Signatories to the Multilateral Convention**

Many of India's important treaty partners have signed the Multilateral Convention. These include the United Kingdom, Canada, Australia, Belgium, Finland, France, Germany, Cyprus, Singapore, Netherlands, Luxembourg, Japan, South Africa and Ireland.

Key countries that have so far not signed the Multilateral Convention include the United States, Brazil, Malaysia, Thailand and several Middle-eastern states including Saudi Arabia, United Arab Emirates, Oman and Qatar. The Convention itself continues to remain open for signatures and more countries are expected to sign it in the coming months.

### **(ii) List of India's treaties to which the Multilateral Convention will apply**

India's provisional list of Covered Tax Agreements covers its treaties with 93 countries, which represent virtually all its Comprehensive tax treaties. Since the Multilateral Convention does not apply to Limited treaties dealing with shipping, air transport or social security, such treaties are not covered in India's list.

Most of India's important treaty partners have also provisionally notified their treaties with India as Covered Tax Agreements. These include Cyprus, Singapore, Netherlands, Australia, Luxembourg, United Kingdom, Sweden, Canada, France, Ireland and Japan. Thus, subject to the notifications, reservations and options discussed below, the provisions of India's treaties with these countries will stand modified by the Multilateral Convention.

Germany has not notified its treaty with India in its provisional list of Covered Tax Agreements. Hence, unless this treaty is specifically notified by Germany in its final list of Covered Tax Agreements, the Multilateral Convention will not affect India's existing treaty with Germany.

### **(iii) Fiscally Transparent Entities (Article 3 of the Multilateral Convention)**

Many of India's treaties do not contain specific provisions that deal with the availability of treaty benefits to entities that are treated as fiscally transparent in their country of formation. Although some treaties (such as the India-US treaty or the recently amended India-UK treaty) provide for rules to determine the availability of treaty benefits to certain specific transparent entities such as partnerships, estates and trusts, these do not address the availability of treaty benefits to other fiscally transparent entities such as Limited Liability Companies that are usually fiscally transparent.

The multilateral instrument seeks to address this issue across treaties by providing that:



*“income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting Jurisdiction shall be considered to be income of a resident of a Contracting Jurisdiction but only 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”.*

This is intended to address the issue of availability of treaty benefits in case of all fiscally transparent entities, and remove the uncertainty that exists in this regard.

Since, this is not a minimum standard, signatories to the treaty have the option of not applying this to their respective treaties. *Pursuant to this, India has indicated that it will not apply this Article to any of its Covered Tax Agreements.* Hence, this provision does not affect any of India’s bilateral treaties.

(iv) Dual Resident Entities (Article 4 of the Multilateral Convention)

This provision is intended to modify the tie-breaker test under treaties for persons other than individuals. It provides that in cases where a person is a resident of more than one Contracting State, it’s residency shall be determined by means of mutual agreement of the competent authorities of both countries. In such cases, the competent authorities shall have regard to the place of effective management, the place of incorporation or other relevant factors. More importantly, it provides that in the absence of any agreement between the competent authorities, the dual-resident entity shall not be entitled to any relief or exemption from tax under the bilateral treaty, except as agreed by the competent authorities.

*India has not made any reservation in respect of this Article. Hence, its applicability to India’s treaties will depend on whether its treaty partners have chosen to accept this Article or to exclude its applicability altogether.*

The position under some of India’s important treaties is summarised below:

Cyprus	<i>Cyprus has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
Singapore	<i>Singapore has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
Netherlands	<i>Netherlands has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 4</u></i>
Australia	<i>Australia has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 4</u></i>
Luxembourg	<i>Luxembourg has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax</i>



	<i>Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>United Kingdom</i>	<i>The United Kingdom has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 4</u></i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>France</i>	<i>France has reserved its right to not apply the provisions of Article 4 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>Ireland</i>	<i>Ireland has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 4</u></i>
<i>Japan</i>	<i>Japan has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 4</u></i>

(v) Application of methods for elimination of Double Taxation (Article 5 of the Multilateral Convention)

Article 5 provides three alternative ways in which countries can address problems arising from the inclusion of the exemption method in treaties with respect to income that is not taxed in the State of source. *This provision is not a minimum standard, and India has reserved its right to not apply Article 5 with respect to all of its Covered Tax Agreements.* Hence, this provision does not affect any of India's bilateral treaties.

(vi) Purpose of a Covered Tax Agreement (Article 6 of the Multilateral Convention)

Article 6 modifies the preamble to bilateral treaties to expressly state that the purpose of the treaty is not to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance. It is expected that the introduction of such language in the preamble will serve as an aid to the interpretation of the treaty in light of the provisions of the Vienna Convention on the law of treaties.

This is a minimum standard and it is not open to a Contracting State to exclude the applicability of this provision unless its existing treaties already contain preamble language reflecting this intent. *As a result, this preamble should be incorporated in India's Covered Tax Agreements.*



(vii) Prevention of Treaty Abuse (Article 7 of the Multilateral Convention)

Article 7 envisages three approaches in bilateral treaties to curb treaty abuse:

- a) A Principal Purpose Test;
- b) A simplified Limitation on Benefits Clause (LoB);
- c) A detailed LoB Clause

*The Principal Purpose Test* states that benefits under a treaty will not be available in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit. However, the benefit will be available if it can be established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty.

*The 'simplified' Limitation on Benefits article* provides that treaty benefits will not be available unless the resident is a 'qualified person', which is defined to include:

- An individual
- Contracting state, political subdivision, local authority etc.
- Company whose shares are regularly traded
- NGOs/Pension funds
- Entities, at least 50% of whose shares are held by 'qualified persons' for half the days in the 12-month period
- A resident who is engaged in an active conduct of a business
- Entities which are more than 75% owned by equivalent beneficiaries

Specifically, in the context of active trade or business, it is provided that the following activities or a combination thereof will not be considered as an active trade or business:

- operating as a holding company;
- providing overall supervision or administration of a group of companies
- providing group financing (including cash pooling); or
- making or managing investments, unless these activities are carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business as such

The multilateral convention also contemplates a more "detailed" Limitation on Benefits clause. However, it provides that this will need to be negotiated by parties in a bilateral context.

The Multilateral Convention makes it mandatory for countries to adopt one of the following approaches in their bilateral treaties:

- a) the Principal Purpose Test;
- b) the Principal Purpose Test along with the simplified or detailed Limitation on Benefits article; or
- c) the Detailed Limitation on Benefits article with specific anti-conduit provisions



The Principal Purpose test is mandatory, and it is not open to parties to exclude its applicability except in very limited and specific circumstances. However, these exclusions do not apply in an Indian context, and hence, the Principal Purpose test should form part of India's Covered Tax Agreements.

India has opted to apply the simplified Limitation on Benefits Articles in respect of its Covered Tax Agreements. *However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt the simplified Limitation on Benefits Clause.*

The position in this regard under some of India's important treaties is summarised below:

<i>Cyprus</i>	<i>None of these treaty partners have chosen to adopt a simplified Limitation on Benefits Clause. Hence, this will not apply in respect of their respective treaties with India</i>
<i>Singapore</i>	
<i>Netherlands</i>	
<i>Australia</i>	
<i>Luxembourg</i>	
<i>United Kingdom</i>	
<i>Sweden</i>	
<i>Canada</i>	
<i>France</i>	
<i>Ireland</i>	
<i>Japan</i>	

(viii) Dividend Transfer Transactions (Article 8 of the Multilateral Convention)

This provision is intended to introduce a minimum shareholding period that is required to be satisfied for a company to be entitled to a reduced rate on dividends from a subsidiary. This requires that the ownership conditions are required to be met throughout a 365-day period upto the date of the dividend.

India has notified that this provision will not apply in respect of its treaty with Portugal since, the India-Portugal treaty already provides for a two-year holding period (i.e. which is longer than what is contemplated under Article 8). India has also notified 21 treaties (including Canada, Denmark and Singapore) which provide for a concessional rate of dividend without prescribing a shareholding period.

Incidentally, Canada, Denmark and Singapore have all reserved their right to exclude the applicability of this Article with respect to their Covered Tax Agreements. Hence, India's treaties with these countries will not stand modified under Article 8.



(ix) Capital Gains from alienation of shares or interests of entities deriving their value principally from immovable property (Article 9 of the Multilateral Convention)

This provision comprises of two parts. The first deals with treaties which already contain a provision enabling the source country to tax gains from the alienation of shares or other rights of participation if the shares or rights derive more than a specified percentage of their value from immovable property situated in the country of source. In such cases, it is proposed to expand the scope of the source country taxing rights to provide that their rights to tax the gains will apply:

- a) If the specified value threshold is met at any time during the 365 days preceding the alienation; and
- b) To alienation interests that are comparable to shares, such as interests in a partnership or a trust

The second part enables countries to introduce a provision that gains derived from alienation of shares in entities deriving their value principally from immovable property (real property) into a Covered Tax Agreement that does not have such a rule. This rule also encompasses the 365-day threshold and the sale of comparable interest

India has opted to adopt both the parts (i.e. to modify existing provisions of covered tax agreements that confer such a taxing right to the source country; as well as to introduce a provision to this effect in covered tax agreements that do not currently have such a provision).

*However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt these parts.*

The position under some of India's important treaties is summarised below:

<i>Cyprus</i>	<i>Cyprus has reserved its right to not apply the provisions of Article 9 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Singapore</i>	<i>Singapore has reserved its right to not apply the provisions of Article 9 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>Netherlands</i>	<i>Netherlands has not made a reservation that excludes the applicability of this provision. <u>Hence, article 13(4) of its treaty with India should stand modified in terms of Article 9 (the first part)</u></i>
<i>Australia</i>	<i>Australia has not made a reservation that excludes the applicability of this provision. <u>Hence, article 13(4) of its treaty with India should stand modified in terms of Article 9 (the first part)</u></i>
<i>Luxembourg</i>	<i>Luxembourg has reserved its right to not apply the provisions of Article 9 to any of its Covered Tax</i>





	<i>Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>United Kingdom</i>	<i>The United Kingdom has reserved its right to not apply the provisions of Article 9(1) to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 9(1) to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 9(1) to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point</i>
<i>France</i>	<i>France has not made a reservation that excludes the applicability of this provision. <u>Hence, article 14(4) of its treaty with India should stand modified in terms of Article 9 (the first part)</u></i>
<i>Ireland</i>	<i>Ireland has not made a reservation that excludes the applicability of this provision. <u>Hence, article 13(4) of its treaty with India should stand modified in terms of Article 9 (the first part)</u></i>
<i>Japan</i>	<i>Japan has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 9 (the second part- since the treaty currently does not contain an existing provision enabling the country of source to tax capital gains on sale of shares or interests in companies owning immovable property)</u></i>

(x) Anti-abuse Rule for Permanent Establishments situated in third jurisdictions (Article 10 of the Multilateral Convention)

This rule deals with situations where an enterprise of the country of residence derives income from the country of source, and such income is considered by the country of residence as being attributed to a permanent establishment of the enterprise in a third jurisdiction. If the profits attributable to the permanent establishment are exempt in the country of residence, the benefits of the covered tax agreement will not be available in respect of any income on which the tax in the third jurisdiction (i.e. where the permanent establishment is located) is less than 60% of the tax that would be imposable in the country of residence if the permanent establishment had been situated there.

India has not made any reservations in respect of this Article. *However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt this provision.*



The position under some of India's important treaties is summarised below:

<i>Cyprus</i>	<i>Cyprus has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Singapore</i>	<i>Singapore has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Netherlands</i>	<i>Netherlands has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 10</u></i>
<i>Australia</i>	<i>Australia has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Luxembourg</i>	<i>Luxembourg has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>United Kingdom</i>	<i>The United Kingdom has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>France</i>	<i>France has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Ireland</i>	<i>Ireland has reserved its right to not apply the provisions of Article 10 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Japan</i>	<i>Japan has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 10</u></i>



(xi) Application of Tax Agreements to restrict a party's right to tax its own residents (Article 11 of the Multilateral Convention)

This article reiterates the right of a country of residence to tax its own residents except with respect to some limited aspects. No reservations have been made by India

(xii) Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies (Article 12 of the Multilateral Convention)

This Article addresses cases of artificial avoidance of PE status through *Commissionaire Arrangements* and similar strategies. It provides that a permanent establishment will include situations where:

- a) a person acts on behalf of an enterprise and habitually concludes contracts, or habitually plays a principal role in the conclusion of contracts that are routinely concluded without material modification by the enterprise
- b) These contracts are in the name of the enterprise or for transfer of ownership over goods owned by that enterprise or for provision of services by that enterprise

No reservations have been made by India in respect of this Article. *However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt this provision.*

The position under some of India's important treaties is summarised below:

<i>Cyprus</i>	<i>Cyprus has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Singapore</i>	<i>Singapore has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Netherlands</i>	<i>Netherlands has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 12</u></i>
<i>Australia</i>	<i>Australia has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Luxembourg</i>	<i>Luxembourg has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>United Kingdom</i>	<i>The United Kingdom has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax</i>



	<i>Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>France</i>	<i>France has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 12.</u></i>
<i>Ireland</i>	<i>Ireland has reserved its right to not apply the provisions of Article 12 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Japan</i>	<i>Japan has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 12.</u></i>

(xiii) Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions (Article 13 of the Multilateral Convention)

This Article provides for two options regarding the scope of the specific activity exemptions contained in the definition of permanent establishment (i.e. a place of storage, display, processing, purchase of goods etc).

Under Option A, the article is proposed to be modified to provide that that the activities listed therein will be deemed not to constitute a permanent establishment only if they are of a preparatory or auxiliary character.

Option B envisages that the specific activities listed in the definition of permanent establishment are intrinsically preparatory or auxiliary and, in order to provide greater certainty for both tax administrations and taxpayers, takes the view that these activities should not be subject to the condition that they be of a preparatory or auxiliary character. Concerns about inappropriate use of the specific activity exemptions can be addressed through anti-fragmentation rules under this Option.

*India has chosen to apply Option A in its covered agreements i.e. that in addition to falling under specific activities listed in article 5, it will additionally be necessary to demonstrate that these activities are of a preparatory and auxiliary character. However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt the same option.*

The position under some of India's important treaties is summarised below:



<i>Cyprus</i>	<i>Cyprus has reserved its right to not apply the provisions of Article 13 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Singapore</i>	<i>Singapore has chosen to apply Option B in respect of its covered tax agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Netherlands</i>	<i>Netherlands has chosen to apply Option A in respect of its covered tax agreements. <u>Hence, its treaty with India should stand modified in terms of Article 13</u></i>
<i>Australia</i>	<i>Australia has chosen to apply Option A in respect of its covered tax agreements. <u>Hence, its treaty with India should stand modified in terms of Article 13</u></i>
<i>Luxembourg</i>	<i>Luxembourg has chosen to apply Option B in respect of its covered tax agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>United Kingdom</i>	<i>The United Kingdom has adopted anti-fragmentation rules set out in Article 13(4). Hence, its treaty with India should not be modified so as to incorporate Option A.</i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 13 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 13 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>France</i>	<i>France has chosen to apply Option B in respect of its covered tax agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Ireland</i>	<i>Ireland has chosen to apply Option B in respect of its covered tax agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Japan</i>	<i>Japan has chosen to apply Option A in respect of its covered tax agreements. <u>Hence, its treaty with India should stand modified in terms of Article 13</u></i>

(xiv) Splitting-up of Contracts (Articles 14 and 15 of the Multilateral Convention)

The BEPS Report on Action 7 had identified splitting-up of contracts as a potential strategy for the artificial avoidance of permanent establishment status. This was intended to abuse the time threshold set out in treaties.

To address this, it is provided that activities relating to building site, construction or installation and connected activities at the same site/project by closely related enterprises should to be aggregated to determine if the time threshold is satisfied



Article 15 provides that entities will be considered closely connected if one controls the other or both are under common control.

No reservations have been made by India in respect of this Article. *However, its applicability to India's treaties will depend on whether its treaty partners have also chosen to adopt this provision.*

The position under some of India's important treaties is summarised below:

<i>Cyprus</i>	<i>Cyprus has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Singapore</i>	<i>Singapore has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Netherlands</i>	<i>Netherlands has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 14</u></i>
<i>Australia</i>	<i>Australia has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 14</u></i>
<i>Luxembourg</i>	<i>Luxembourg has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>United Kingdom</i>	<i>The United Kingdom has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Sweden</i>	<i>Sweden has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>Canada</i>	<i>Canada has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>
<i>France</i>	<i>France has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 14</u></i>
<i>Ireland</i>	<i>Ireland has not made a reservation that excludes the applicability of this provision. <u>Hence, its treaty with India should stand modified in terms of Article 14</u></i>
<i>Japan</i>	<i>Japan has reserved its right to not apply the provisions of Article 14 to any of its Covered Tax Agreements. Hence, its treaty with India remains unchanged on this point.</i>



(xv) Mutual Agreement Procedure (Article 16 of the Multilateral Convention)

Article 16 provides for mandatory inclusion of MAP provisions in Covered Tax Agreements. However, India has opted out of this provision in accordance with Article 16(5) on the basis that it intends to meet the minimum standard by ensuring that under each of its Covered Tax Agreements, a taxpayer may present its case to the competent authority of the appropriate jurisdiction, and that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases presented by the taxpayers to its competent authority in which its competent authority does not consider the taxpayer's objection to be justified.

(xvi) Corresponding adjustments (Article 17 of the Multilateral Convention)

Article 17 provides for corresponding adjustments in cases of transfer pricing disputes. India has made a reservation to exclude the applicability of this provision to those Covered Tax Agreements that already contain a provision for corresponding adjustments.

(xvii) Arbitration (Part VI- Articles 18 to 26 of the Multilateral Convention)

Part VI of the Multilateral Convention provides for mandatory binding arbitration in cases where competent authorities are unable to reach an agreement to resolve a case under the Mutual Agreement Procedure. This Part is optional and will apply only if a country notifies the Depository of its intent to apply this Part with respect to its Covered Tax Agreements.

*India has not opted for Part VI of the Convention.*

**Comments:**

With the process of signing complete, the Multilateral Convention is one step closer to implementation. The time-consuming process of notification and reservations, is almost complete, albeit on a provisional basis. The sheer number of countries involved, and the interplay between the various reservations made and options exercised by various countries makes the practical application of the Multilateral Convention a complex and highly involved task.

While India's approach to the Convention has largely been on expected lines, some key takeaways are set out below:



- a) India has not adopted a selective approach for applying the Convention to its treaty network. Virtually all of India's comprehensive treaties are likely to be affected by the Multilateral Convention, albeit in varying degrees.
- b) Some beneficial provisions such as those that enable treaty access to fiscally transparent entities have not been accepted by India.
- c) India has opted for a simplified LOB clause as the basis for limiting treaty abuse. However, very few of its key treaty partners seem to prefer this approach. As a result, the subjective Principal Purpose Test is likely to be more widely applied in India's treaties.
- d) On treaty abuse provisions relating to Commissionaire structures, activity exemptions for Permanent establishments status, splitting up etc., many of India's important treaty partners have opted to exclude the application of these provisions. This could limit any benefit that India would have expected to gain as a result of these provisions.
- e) As widely expected, India did not sign up for mandatory binding arbitration upon failure of the Mutual Agreement Process.
- f) Key treaty partners of India i.e. Mauritius and US have not yet signed up for the Multilateral Convention. Mauritius has announced that it will sign the Convention by the end of June 2017. However, there is no clarity on when and if the US will sign on to the Convention.

The signing of the Multilateral Convention marks the beginning of a new era, not only in the evolution of global tax policy, but also at a practical level for taxpayers and advisors alike. Applying a treaty will no longer be a simple exercise involving a quick reference to a rate chart. It will become a complex exercise that involves identifying:

- a) Whether both countries are signatories to the Multilateral Convention
- b) Whether the treaty is a 'covered tax agreement' (i.e. whether it has been notified by both countries)
- c) What are the reservations and options exercised by each of the countries, and how the interplay between these choices will modify the treaty in question.

Coupled with other far reaching changes in the Indian context that affect cross border activity such as the General Anti Avoidance Rule, Thin capitalisation and secondary adjustments, the impact of the Multilateral Convention in India could be significant.





## ADDRESS

### Mumbai

1101, One Indiabulls Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel:+91 22 6108 1000 / 1900  
Fax:+91-22-6108 1001

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahladnagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434  
Fax: +91-79-6134 3477

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500  
Fax: +91-80-4660 2501

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000  
Fax: +91-124-668 7001

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #23 01  
Singapore 049319  
Tel: +65 9105 3645

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### Dubai

U-Bora Tower 2,  
11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel:+ 971 56 900 5849

## KEY CONTACTS

### Dinesh Kanabar (Mumbai)

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Vishal Gada (Ahmedabad)

Partner  
vishal.gada@dhruvaadvisors.com

### Ajay Rotti (Bengaluru)

Partner  
ajay.rotti@dhruvaadvisors.com

### Krishan Malhotra (Delhi / NCR)

Partner  
krishan.malhotra@dhruvaadvisors.com

### Mahip Gupta (Singapore)

Partner  
mahip.gupta@dhruvaadvisors.com

### Pratik Shah (Dubai)

Partner  
pratik.shah@dhruvaadvisors.com

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