



Cabinet

Cabinet approves signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting by India

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The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The Convention is an outcome of the OECD / G20 BEPS Project to tackle base erosion and profit shifting through tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.

The Final BEPS Project identified 15 actions to address BEPS in a comprehensive manner. Implementation of the Final BEPS Package requires changes to more than 3000 bilateral tax treaties which will be burdensome and time consuming. In view of the same, the Convention was conceived as a Multilateral instrument which would swiftly modify all covered bilateral tax treaties (Covered Tax Agreements / CTA) to implement BEPS measures. For this purpose, formation of an Ad-hoc Group for the development of such multilateral instrument was endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015.

Background:

India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalization of the text of the Multilateral Convention, starting May 2015. The text of the Convention and the accompanying Explanatory Statement was adopted by the Ad hoc Group on 24 November 2016.

The Convention implements two minimum standards relating to prevention of treaty abuse and dispute resolution through Mutual Agreement Procedure. The Convention will not function in the same way as an Amending Protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreements. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. The Convention ensures consistency and certainty in the implementation of the BEPS Project in a multilateral context. The Convention also provides flexibility to exclude a specific tax treaty and to opt out of provisions or parts of provisions through making of reservations.

The Convention has been opened for signature as on 31st December 2016 and a first joint signing ceremony is scheduled to be held in Paris on 7th June, 2017. Signature is the first step in the process of expressing consent to be bound by the Convention, which will become binding only upon ratification. A list of Covered Tax Agreements as well as a list of reservations and options chosen by a country are required to be made at the time of signature or when depositing the instrument of ratification.

Cabinet approval has been sought for the signing of the Convention by India. It is also proposed to make a provisional list of Covered Tax Agreements and a provisional list of reservations at the time of signature in June, 2017. Final lists for both will be submitted by India at the time of submission of instrument of ratification.

Signing of the Multilateral Convention will enable the application of BEPS outcomes through modification of existing tax treaties of India in a swift manner. It is also in India's interest to ensure that all its treaty partners adopt the BEPS anti-abuse outcomes. Signing of the Convention will enable curbing of revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

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