

BEPS – LIST OF ACTION PLANS

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BEPS

MINIMUM
STANDARD

BEPS – LIST OF MINIMUM STANDARDS

Source: <http://www.oecd.org/tax/beps/beps-about.htm>

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5	Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance
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14	Making Dispute Resolution Mechanisms More Effective



BEPS

IMPLEMENTATION

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
1	Addressing the Tax Challenges of the Digital Economy		Significant Economic Presence: Explanation 2A to Section 9(1) Equalisation Levy: Chapter 8 of FA, 2016

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
2	Neutralising the Effects of Hybrid Mismatch Arrangements	Article 3: Transparent Entities Article 4: Dual Resident Entities	
3	Designing Effective Controlled Foreign Company Rules		Sections 5 r.w. s. 58 & 295 r.w. Schedule II of Direct Tax Code, 2010

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
4	Limiting Base Erosion Involving Interest Deductions and Other Financial Payments		<p>Section 94B: Limitation on interest deduction in certain cases.</p> <p>Section 92CE: Secondary Adjustment</p>
5	Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance		<p>Section 115BBF: Tax on income from patent.</p>

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
6	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	<p>Article 5: Application of Methods for Elimination of Double Taxation</p> <p>Article 6: Purpose of Covered Tax Agreement</p> <p>Article 7: Prevention of Treaty Abuse</p> <p>Article 8: Dividend Transfer Transactions</p>	DTAAs with Mauritius, Singapore and Cyprus

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
6	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	Article 9: Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property Article 10: Anti-abuse Rules for Permanent Establishment situated in Third Jurisdiction Article 11: Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
7	Preventing the Artificial Avoidance of Permanent Establishment Status	Article 12: Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies Article 13: Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions Article 14: Splitting-up of Contracts	

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
8-10	Aligning Transfer Pricing Outcomes with Value Creation		
11	Measuring and Monitoring BEPS		
12	Mandatory Disclosure Rules		

IMPLEMENTATION OF BEPS

Action Plan	Title	MLI	Domestic Law
13	Transfer Pricing Documentation and Country-by-Country Reporting		Section 92D r.w.s 286: Furnishing of report in respect of international group.
14	Making Dispute Resolution Mechanisms More Effective	Article 16-26	
15	Developing a Multilateral Instrument to Modify Bilateral Tax Treaties		

ARTICLE 3

Transparent Entities

ARTICLE 3 – Transparent Entities

1. For the purposes of a Covered Tax Agreement,

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.

ARTICLE 3 – Transparent Entities

2. Provisions of a Covered Tax Agreement that require a Contracting Jurisdiction to exempt from income tax or provide a deduction or credit equal to the income tax paid with respect to income derived by a resident of that Contracting Jurisdiction which may be taxed in the other Contracting Jurisdiction according to the provisions of the Covered Tax Agreement shall not apply to the extent that such provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction.

ARTICLE 3 – Transparent Entities

3. With respect to Covered Tax Agreements for which one or more Parties has made the reservation described in subparagraph a) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents), the following sentence will be added at the end of paragraph 1: "In no case shall the provisions of this paragraph be construed to affect a Contracting Jurisdiction's right to tax the residents of that Contracting Jurisdiction."

ARTICLE 3 – Transparent Entities

4. Paragraph 1 (as it may be modified by paragraph 3) shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that they address whether income derived by or through entities or arrangements that are treated as fiscally transparent under the tax law of either Contracting Jurisdiction (whether through a general rule or by identifying in detail the treatment of specific fact patterns and types of entities or arrangements) shall be treated as income of a resident of a Contracting Jurisdiction.

ARTICLE 3 – Transparent Entities

5. A Party may reserve the right:

a) for the entirety of this Article not to apply to its Covered Tax Agreements;

b) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4;

c) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which denies treaty benefits in the case of income derived by or through an entity or arrangement established in a third jurisdiction;

ARTICLE 3 – Transparent Entities

5. A Party may reserve the right:

d) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements;

e) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements and denies treaty benefits in the case of income derived by or through an entity or arrangement established in a third jurisdiction;

ARTICLE 3 – Transparent Entities

5. A Party may reserve the right:

f) for paragraph 2 not to apply to its Covered Tax Agreements;

g) for paragraph 1 to apply only to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements.

ARTICLE 3 – Transparent Entities

6. Each Party that has not made a reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 4 that is not subject to a reservation under subparagraphs c) through e) of paragraph 5, and if so, the article and paragraph number of each such provision. In the case of a Party that has made the reservation described in subparagraph g) of paragraph 5, the notification pursuant to the preceding sentence shall be limited to Covered Tax Agreements that are subject to that reservation.

Contd....

ARTICLE 3 – Transparent Entities

Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (as it may be modified by paragraph 3) to the extent provided in paragraph 4. In other cases, paragraph 1 (as it may be modified by paragraph 3) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (as it may be modified by paragraph 3).

ARTICLE 4

DUAL RESIDENT
ENTITIES

ARTICLE 4 - Dual Resident Entities

1. Where by reason of the provisions of a Covered Tax Agreement a person other than an individual is a resident of more than one Contracting Jurisdiction,

the competent authorities of the Contracting Jurisdictions shall endeavour to determine by mutual agreement the Contracting Jurisdiction of which such person shall be deemed to be a resident for the purposes of the Covered Tax Agreement,

ARTICLE 4 - Dual Resident Entities

having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.

In the absence of such agreement,

such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement

except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Jurisdictions.

ARTICLE 4 - Dual Resident Entities

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement

that provide rules for determining whether a person other than an individual

shall be treated as a resident of one of the Contracting Jurisdictions

in cases in which that person would otherwise be treated as a resident of more than one Contracting Jurisdiction.

Paragraph 1 shall not apply, however, to provisions of a Covered Tax Agreement specifically addressing the residence of companies participating in dual-listed company arrangements.

ARTICLE 4 - Dual Resident Entities

3. A Party may reserve the right:

a) for the entirety of this Article not to apply to its Covered Tax Agreements;

b) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction **by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;**

ARTICLE 4 - Dual Resident Entities

3. A Party may reserve the right:

c) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction **by denying treaty benefits without requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;**

ARTICLE 4 - Dual Resident Entities

3. A Party may reserve the right:

d) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction **by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence,** and that set out the treatment of that person under the Covered Tax Agreement where such an agreement cannot be reached;

ARTICLE 4 - Dual Resident Entities

3. A Party may reserve the right:

e) to replace the last sentence of paragraph 1 with the following text for the purposes of its Covered Tax Agreements: “In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement.”;

f) for the entirety of this Article not to apply to its Covered Tax Agreements with Parties that have made the reservation described in subparagraph e).

ARTICLE 4 - Dual Resident Entities

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3

shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 2

that is not subject to a reservation under subparagraphs b) through d) of paragraph 3,

and if so, the article and paragraph number of each such provision.

ARTICLE 4 - Dual Resident Entities

Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1.

In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

ARTICLE 5

Application of Methods for Elimination of Double Taxation

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

1. A Party may choose to apply either paragraphs 2 and 3 (Option A), paragraphs 4 and 5 (Option B), or paragraphs 6 and 7 (Option C), or may choose to apply none of the Options.

Where each Contracting Jurisdiction to a Covered Tax Agreement chooses a different Option (or where one Contracting Jurisdiction chooses to apply an Option and the other chooses to apply none of the Options),

the Option chosen by each Contracting Jurisdiction shall apply with respect to its own residents.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option A

2. Provisions of a Covered Tax Agreement that would otherwise exempt **income derived or capital owned** by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction

for the purpose of eliminating double taxation

shall not apply where the other Contracting Jurisdiction applies the provisions of the Covered Tax Agreement to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option A

In the latter case, the first-mentioned Contracting Jurisdiction

shall allow as a deduction from the tax on the income or capital of that resident

an amount equal to the tax paid in that other Contracting Jurisdiction.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option A

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income or capital which may be taxed in that other Contracting Jurisdiction.

3. Paragraph 2 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income or capital described in that paragraph.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option B

4. Provisions of a Covered Tax Agreement that would otherwise exempt **income derived** by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction

for the purpose of eliminating double taxation because such income is treated as a dividend by that Contracting Jurisdiction

shall not apply where such income gives rise to a deduction for the purpose of determining the taxable profits of a resident of the other Contracting Jurisdiction under the laws of that other Contracting Jurisdiction.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option B

In such case, the first-mentioned Contracting Jurisdiction shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other Contracting Jurisdiction.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to such income which may be taxed in that other Contracting Jurisdiction.

5. Paragraph 4 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income described in that paragraph.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option C

6. a) Where a resident of a Contracting Jurisdiction derives income or owns capital which may be taxed in the other Contracting Jurisdiction in accordance with the provisions of a Covered Tax Agreement (except to the extent that these provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction), the first-mentioned Contracting Jurisdiction shall allow:

i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Contracting Jurisdiction;

ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other Contracting Jurisdiction.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option C

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to the income or the capital which may be taxed in that other Contracting Jurisdiction.

b) Where in accordance with any provision of the Covered Tax Agreement income derived or capital owned by a resident of a Contracting Jurisdiction **is exempt from tax** in that Contracting Jurisdiction, such Contracting Jurisdiction may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

Option C

7. Paragraph 6 shall apply in place of provisions of a Covered Tax Agreement that,

for purposes of eliminating double taxation,

require a Contracting Jurisdiction to exempt from tax in that Contracting Jurisdiction income derived or capital owned by a resident of that Contracting Jurisdiction

which, in accordance with the provisions of the Covered Tax Agreement, may be taxed in the other Contracting Jurisdiction.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

- 8.** A Party that does not choose to apply an Option under paragraph 1 may reserve the right for the entirety of this Article not to apply with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements).
- 9.** A Party that does not choose to apply Option C may reserve the right, with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements), not to permit the other Contracting Jurisdiction(s) to apply Option C.

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

10. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depositary of its choice of Option. Such notification shall also include:

a) in the case of a Party that chooses to apply **Option A**, the list of its Covered Tax Agreements which contain a provision described in **paragraph 3**, as well as the article and paragraph number of each such provision;

b) in the case of a Party that chooses to apply **Option B**, the list of its Covered Tax Agreements which contain a provision described in **paragraph 5**, as well as the article and paragraph number of each such provision;

ARTICLE 5 – ELIMINATION OF DOUBLE TAXATION

10. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depository of its choice of Option. Such notification shall also include:

c) in the case of a Party that chooses to apply **Option C**, the list of its Covered Tax Agreements which contain a provision described in **paragraph 7**, as well as the article and paragraph number of each such provision.

An Option shall apply with respect to a provision of a Covered Tax Agreement only where the Party that has chosen to apply that Option has made such a notification with respect to that provision.

ARTICLE 6

Purpose of a Covered Tax Agreement

ARTICLE 6 – PURPOSE OF COVERED TAX AGREEMENT

1. A Covered Tax Agreement shall be modified to include the following preamble text:

“Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),”.

ARTICLE 6 – PURPOSE OF COVERED TAX AGREEMENT

2. The text described in paragraph 1 shall be included in a Covered Tax Agreement in place of or in the absence of preamble language of the Covered Tax Agreement referring to ***an intent to eliminate double taxation, whether or not that language also refers to the intent not to create opportunities for non-taxation or reduced taxation.***

3. A Party may also choose to include the following preamble text with respect to its Covered Tax Agreements that do not contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters:

“Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,”.

ARTICLE 6 – PURPOSE OF COVERED TAX AGREEMENT

4. A Party may reserve the right for paragraph 1 not to apply to its Covered Tax Agreements that already contain preamble language describing ***the intent of the Contracting Jurisdictions to eliminate double taxation without creating opportunities for non-taxation or reduced taxation,***

whether that language is limited to cases of tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Covered Tax Agreement for the indirect benefit of residents of third jurisdictions) or **applies more broadly.**

ARTICLE 6 – PURPOSE OF COVERED TAX AGREEMENT

5. Each Party shall notify the Depository of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains preamble language described in paragraph 2, and if so, the text of the relevant preambular paragraph.

Where all Contracting Jurisdictions have made such a notification with respect to that preamble language, such preamble language shall be replaced by the text described in paragraph 1.

In other cases, the text described in paragraph 1 shall be included in addition to the existing preamble language.

ARTICLE 6 – PURPOSE OF COVERED TAX AGREEMENT

6. Each Party that chooses to apply paragraph 3 shall notify the Depository of its choice.

Such notification shall also include the list of its Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters.

The text described in paragraph 3 shall be included in a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply that paragraph and have made such a notification with respect to the Covered Tax Agreement.

ARTICLE 7

Prevention of Treaty Abuse

ARTICLE 7 – PREVENTION OF TREATY ABUSE

1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted 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,**

unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

2. Paragraph 1 shall apply ***in place of*** or ***in the absence of*** provisions of a Covered Tax Agreement that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where ***the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.***

ARTICLE 7 – PREVENTION OF TREATY ABUSE

3. A Party that has not made the reservation described in subparagraph a) of paragraph 15 **may also choose** to apply paragraph 4 with respect to its Covered Tax Agreements.

4. Where a benefit under a Covered Tax Agreement is denied to a person under provisions of the Covered Tax Agreement (as it may be modified by this Convention)

that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement

where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits,

ARTICLE 7 – PREVENTION OF TREATY ABUSE

the competent authority of the Contracting Jurisdiction that would otherwise have granted this benefit shall nevertheless treat that person as being entitled **to this benefit**, or **to different benefits with respect to a specific item of income or capital**, if

such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement.

The competent authority of the Contracting Jurisdiction to which a request has been made under this paragraph by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before rejecting the request.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

5. Paragraph 4 shall apply to provisions of a Covered Tax Agreement (as it may be modified by this Convention)

that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement

where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

6. A Party may also choose to apply the provisions contained in paragraphs 8 through 13 (hereinafter referred to as the “**Simplified Limitation on Benefits Provision**”) to its Covered Tax Agreements

by making the notification described in subparagraph c) of paragraph 17.

The Simplified Limitation on Benefits Provision shall apply with respect to a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

7. In cases where some but not all of the Contracting Jurisdictions to a Covered Tax Agreement choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, then, notwithstanding the provisions of that paragraph, the Simplified Limitation on Benefits Provision shall apply with respect to the granting of benefits under the Covered Tax Agreement:

a) **by all Contracting Jurisdictions**, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depositary accordingly; or

b) **only by the Contracting Jurisdictions that choose to apply the Simplified Limitation on Benefits Provision**, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depositary accordingly.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

Simplified Limitation on Benefits Provision

8. Except as otherwise provided in the Simplified Limitation on Benefits Provision, a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall not be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement, other than a benefit under provisions of the Covered Tax Agreement:

a) which determine the residence of a person other than an individual which is a resident of more than one Contracting Jurisdiction by reason of provisions of the Covered Tax Agreement that define a resident of a Contracting Jurisdiction;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

b) which provide that a Contracting Jurisdiction will grant to an enterprise of that Contracting Jurisdiction a corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of an associated enterprise; or

c) which allow residents of a Contracting Jurisdiction to request that the competent authority of that Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement,

unless such resident is a “**qualified person**”, as defined in paragraph 9 at the time that the benefit would be accorded.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

9. A resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be a qualified person at a time when a benefit would otherwise be accorded by the Covered Tax Agreement if, at that time, the resident is:

a) an individual;

b) that Contracting Jurisdiction, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting Jurisdiction, political subdivision or local authority;

c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

d) a person, other than an individual, that:

i) is a non-profit organisation of a type that is agreed to by the Contracting Jurisdictions through an exchange of diplomatic notes; or

ii) is an entity or arrangement established in that Contracting Jurisdiction that is treated as a separate person under the taxation laws of that Contracting Jurisdiction and:

A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting Jurisdiction or one of its political subdivisions or local authorities; or

B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision A);

ARTICLE 7 – PREVENTION OF TREATY ABUSE

e) a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit would otherwise be accorded, persons who are residents of that Contracting Jurisdiction and that are entitled to benefits of the Covered Tax Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

10. a) A resident of a Contracting Jurisdiction to a Covered Tax Agreement will be entitled to benefits of the Covered Tax Agreement with respect to an item of income derived from the other Contracting Jurisdiction, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting Jurisdiction, and the income derived from the other Contracting Jurisdiction emanates from, or is incidental to, that business.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

For purposes of the Simplified Limitation on Benefits Provision, the term “active conduct of a business” shall not include the following activities or any combination thereof:

- i) operating as a holding company;
- ii) providing overall supervision or administration of a group of companies;
- iii) providing group financing (including cash pooling); or
- iv) 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.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

b) If a resident of a Contracting Jurisdiction to a Covered Tax Agreement *derives an item of income from a business activity conducted by that resident in the other Contracting Jurisdiction*, or *derives an item of income arising in the other Contracting Jurisdiction from a connected person*,

the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only ***if the business activity carried on by the resident in the first-mentioned Contracting Jurisdiction to which the item is related is substantial in relation to the same activity or a complementary business activity carried on by the resident or such connected person in the other Contracting Jurisdiction.***

ARTICLE 7 – PREVENTION OF TREATY ABUSE

...Whether a business activity is substantial for the purposes of this subparagraph shall be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be deemed to be conducted by such resident.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

11. A resident of a Contracting Jurisdiction to a Covered Tax Agreement that is not a qualified person

shall also be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement with respect to an item of income

if, on at least half of the days of any twelve-month period that includes the time when the benefit would otherwise be accorded,

persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the beneficial interests of the resident.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

12. If a resident of a Contracting Jurisdiction to a Covered Tax Agreement is neither a qualified person pursuant to the provisions of paragraph 9, nor entitled to benefits under paragraph 10 or 11, the competent authority of the other Contracting Jurisdiction may, nevertheless, grant the benefits of the Covered Tax Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of the Covered Tax Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under the Covered Tax Agreement. Before either granting or denying a request made under this paragraph by a resident of a Contracting Jurisdiction, the competent authority of the other Contracting Jurisdiction to which the request has been made shall consult with the competent authority of the first-mentioned Contracting Jurisdiction.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

13. For the purposes of the Simplified Limitation on Benefits Provision:

a) the term “recognised stock exchange” means:

i) any stock exchange established and regulated as such under the laws of either Contracting Jurisdiction; and

ii) any other stock exchange agreed upon by the competent authorities of the Contracting Jurisdictions;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

13. For the purposes of the Simplified Limitation on Benefits Provision:

b) the term “principal class of shares” means the class or classes of shares of a company which represents the majority of the aggregate vote and value of the company or the class or classes of beneficial interests of an entity which represents in the aggregate a majority of the aggregate vote and value of the entity;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

13. For the purposes of the Simplified Limitation on Benefits Provision:

c) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting Jurisdiction to a Covered Tax Agreement under the domestic law of that Contracting Jurisdiction, the Covered Tax Agreement or any other international instrument which are equivalent to, or more favourable than, benefits to be accorded to that item of income under the Covered Tax Agreement; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

13. For the purposes of the Simplified Limitation on Benefits Provision:

d) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;

e) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

14. The Simplified Limitation on Benefits Provision shall apply in place of or in the absence of provisions of a Covered Tax Agreement

that would limit the benefits of the Covered Tax Agreement (or that would limit benefits other than a benefit under the provisions of the Covered Tax Agreement relating to residence, associated enterprises or non-discrimination or a benefit that is not restricted solely to residents of a Contracting Jurisdiction)

only to a resident that qualifies for such benefits by meeting one or more categorical tests.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

15. A Party may reserve the right:

a) for paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to adopt **a combination of a detailed limitation on benefits provision and either rules to address conduit financing structures or a principal purpose test, thereby meeting the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package**; in such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard;

ARTICLE 7 – PREVENTION OF TREATY ABUSE

15. A Party may reserve the right:

b) for paragraph 1 (and paragraph 4, in the case of a Party that has chosen to apply that paragraph) not to apply to its Covered Tax Agreements that already contain provisions that deny all of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits;

c) for the Simplified Limitation on Benefits Provision not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 14.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

16. Except where the Simplified Limitation on Benefits Provision applies with respect to the granting of benefits under a Covered Tax Agreement by one or more Parties pursuant to paragraph 7, a Party that chooses pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision ***may reserve the right for the entirety of this Article not to apply with respect to its Covered Tax Agreements for which one or more of the other Contracting Jurisdictions has not chosen to apply the Simplified Limitation on Benefits Provision.***

In such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

17. a) Each Party that has not made the reservation described in subparagraph a) of paragraph 15 shall notify the Depository of whether each of its Covered Tax Agreements that is not subject to a reservation described in subparagraph b) of paragraph 15 contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision.

Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (and where applicable, paragraph 4).

Contd...

ARTICLE 7 – PREVENTION OF TREATY ABUSE

In other cases, paragraph 1 (and where applicable, paragraph 4) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (and where applicable, paragraph 4).

A Party making a notification under this subparagraph may also include a statement that while such Party accepts the application of paragraph 1 alone **as an interim measure**, it intends where possible to adopt a limitation on benefits provision, in addition to or in replacement of paragraph 1, through bilateral negotiation.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

b) Each Party that chooses to apply paragraph 4 shall notify the Depository of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification.

c) Each Party that chooses to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6 shall notify the Depository of its choice.

Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.

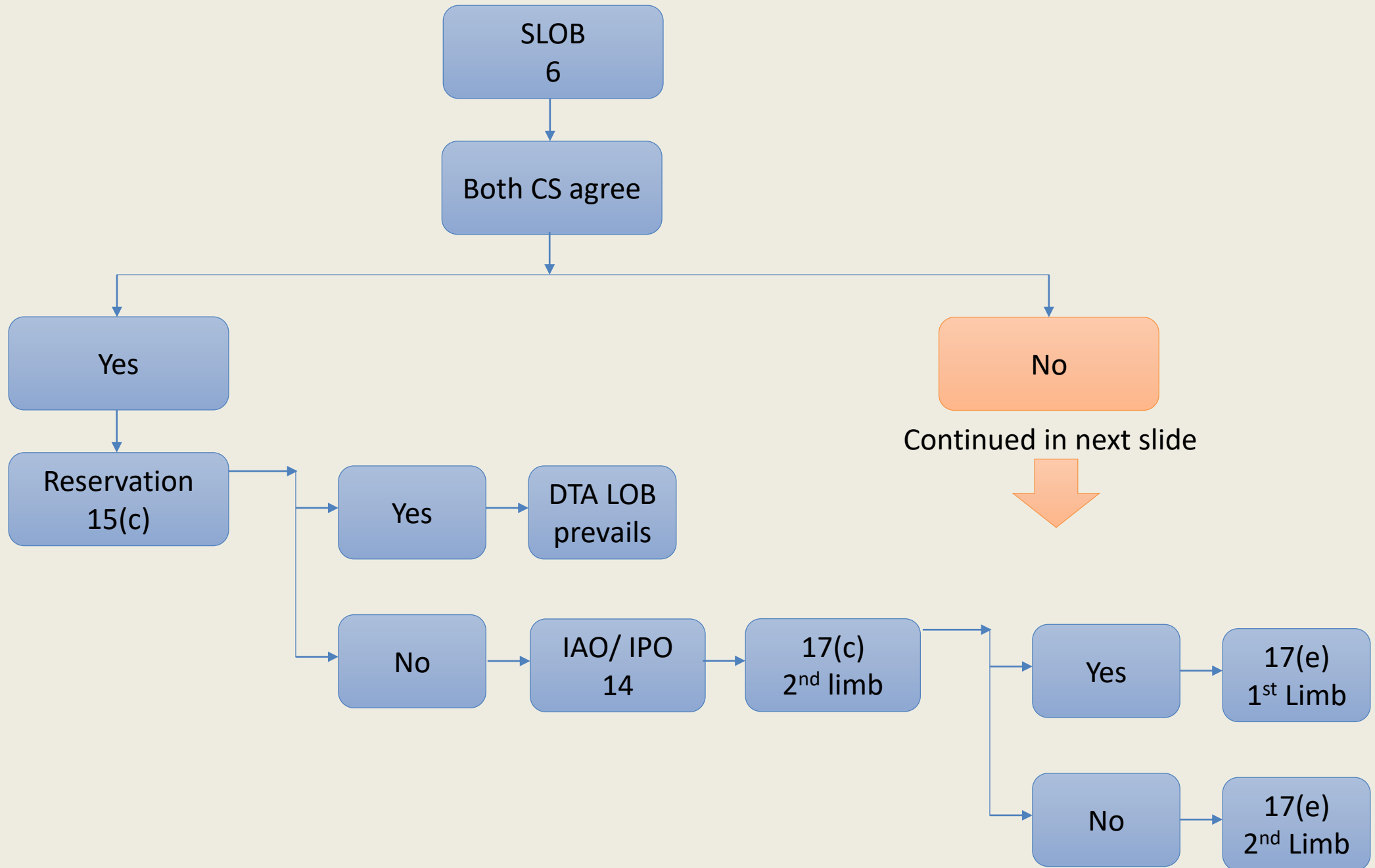
ARTICLE 7 – PREVENTION OF TREATY ABUSE

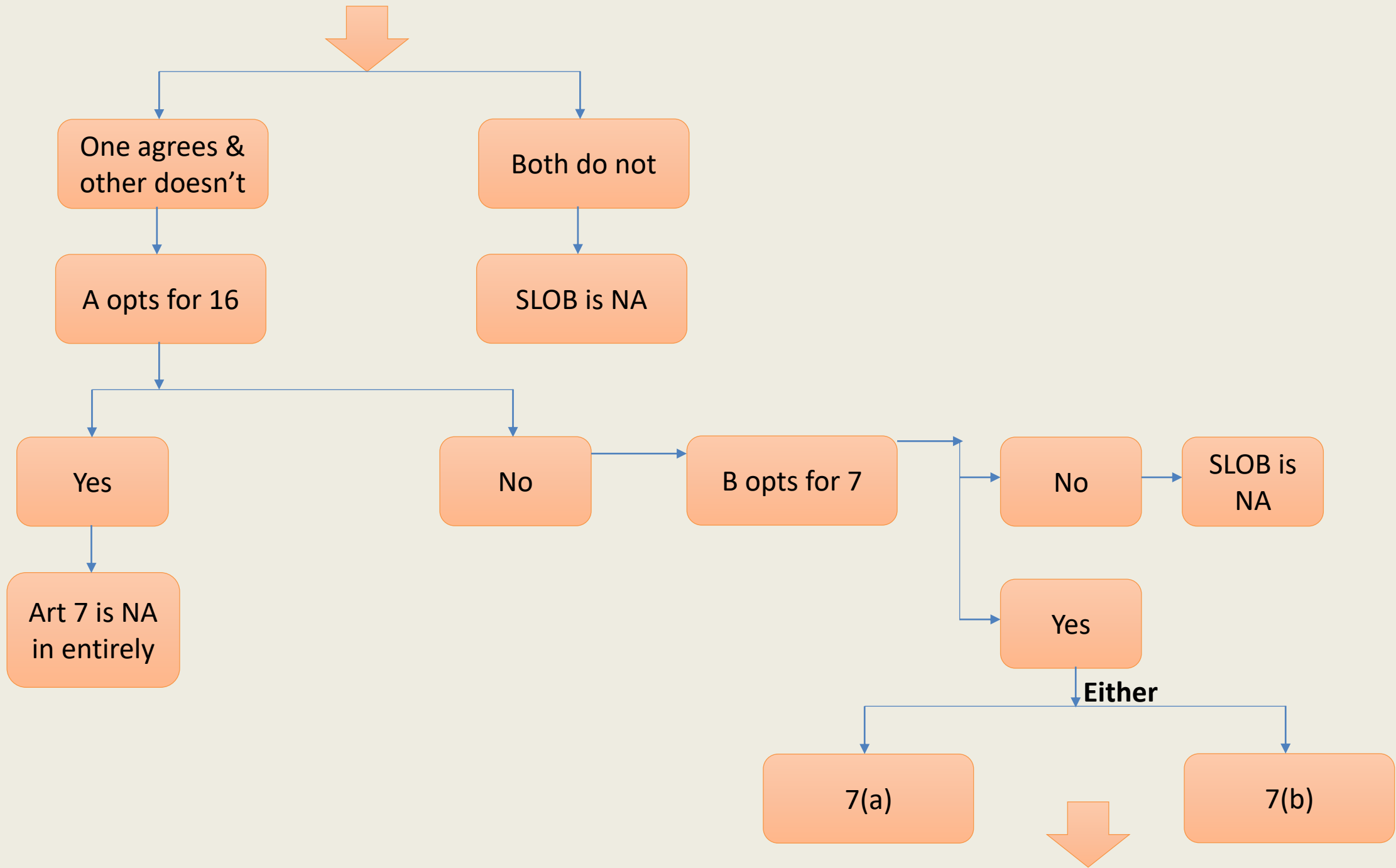
d) Each Party that does not choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, but chooses to apply either subparagraph a) or b) of paragraph 7 shall notify the Depository of its choice of subparagraph.

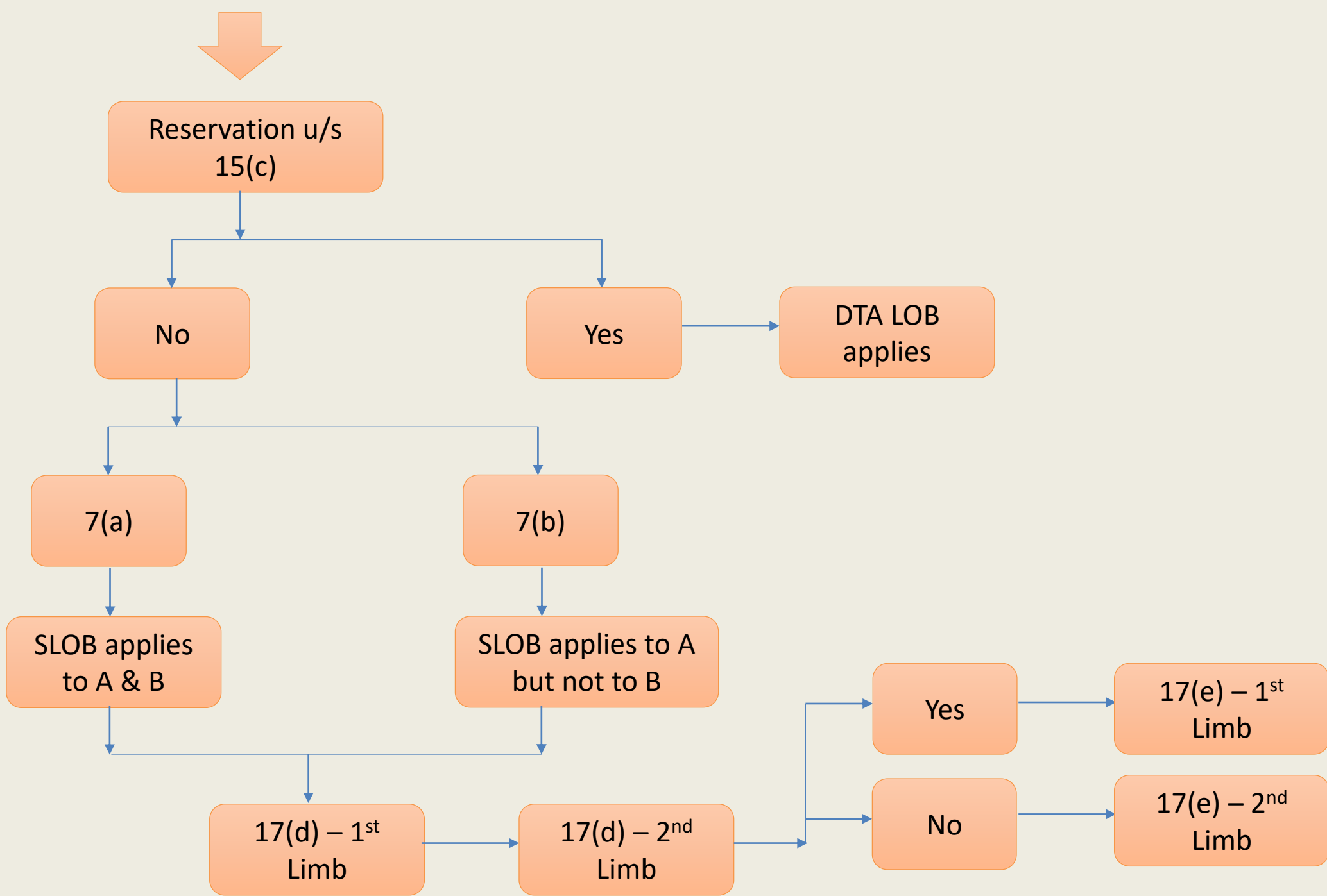
Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.

ARTICLE 7 – PREVENTION OF TREATY ABUSE

e) Where all Contracting Jurisdictions have made a notification under subparagraph c) or d) with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the Simplified Limitation on Benefits Provision. In other cases, the Simplified Limitation on Benefits Provision shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the Simplified Limitation on Benefits Provision.







ARTICLE 8

Dividend Transfer Transactions

ARTICLE 8 – DIVIDEND TRANSFER TRANSACTIONS

1. Provisions of a Covered Tax Agreement that exempt dividends paid by a company which is a resident of a Contracting Jurisdiction from tax or that limit the rate at which such dividends may be taxed, provided that the beneficial owner or the recipient is a company which is a resident of the other Contracting Jurisdiction and which owns, holds or controls more than a certain amount of the capital, shares, stock, voting power, voting rights or similar ownership interests of the company paying the dividends, shall apply **only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends** (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

ARTICLE 8 – DIVIDEND TRANSFER TRANSACTIONS

2. The minimum holding period provided in paragraph 1 shall apply in place of or in the absence of a minimum holding period in provisions of a Covered Tax Agreement described in paragraph 1.

3. A Party may reserve the right:

a) for the entirety of this Article not to apply to its Covered Tax Agreements;

b) for the entirety of this Article not to apply to its Covered Tax Agreements to the extent that the provisions described in paragraph 1 already include:

i) a minimum holding period;

ii) a minimum holding period shorter than a 365 day period; or

iii) a minimum holding period longer than a 365 day period.

ARTICLE 8 – DIVIDEND TRANSFER TRANSACTIONS

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 1 that is not subject to a reservation described in subparagraph b) of paragraph 3, and if so, the article and paragraph number of each such provision.

Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision.

ARTICLE 9

Capital Gains from
Alienation of Shares
or Interests of Entities
Deriving their Value
Principally from
Immovable Property

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 1

- Provisions of a Covered Tax Agreement
- providing that gains derived by a resident of a Contracting Jurisdiction
- from the alienation of shares or other rights of participation in an entity
- may be taxed in the other Contracting Jurisdiction
- provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction (or provided that more than a certain part of the property of the entity consists of such immovable property (real property)):

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 1

(a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

(b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 2

- The period provided in subparagraph a) of paragraph 1 shall apply
- in place of or in the absence of a time period
- for determining whether
- the **relevant value threshold**
- in provisions of a Covered Tax Agreement described in paragraph 1 was met

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 3

- A Party may also choose to apply paragraph 4 with respect to its Covered Tax Agreements.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 4

- For purposes of a Covered Tax Agreement,
- gains derived by a resident of a Contracting Jurisdiction from the alienation of **shares or comparable interests**, such as interests in a partnership or trust,
- may be taxed in the other Contracting Jurisdiction if,
- **at any time during the 365 days preceding the alienation,**
- these shares or comparable interests
- derived **more than 50 per cent of their value directly or indirectly from immovable property** (real property) situated in that other Contracting Jurisdiction

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 5

- Paragraph 4 shall apply in place of or in the absence of provisions of a Covered Tax Agreement providing that gains derived by a resident of a Contracting Jurisdiction
- from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction
- provided that these shares or rights derived
- more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction, or
- provided that more than a certain part of the property of the entity consists of such immovable property (real property).

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 6

A Party may reserve the right:

- a) for paragraph 1 not to apply to its Covered Tax Agreements;
- b) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements;
- c) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements;
- d) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that includes a period for determining whether the relevant value threshold was met;

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 6

e) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that applies to the alienation of interests other than shares;

f) for paragraph 4 not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 5.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 7

- Each Party that has not made the reservation described in subparagraph a) of paragraph 6 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 1, and if so, the **article** and **paragraph** number of each such provision.
- Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement **only where all Contracting Jurisdictions have made a notification** with respect to that provision.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 8

- Each Party that chooses to apply paragraph 4 shall notify the Depository of its choice.
- Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification.
- In such case, paragraph 1 shall not apply with respect to that Covered Tax Agreement.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 8

- In the case of a Party that has not made the reservation described in subparagraph f) of paragraph 6 and has made the reservation described in subparagraph a) of paragraph 6,
- such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 5, as well as the article and paragraph number of each such provision.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property – Paragraph 8

- Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement under this paragraph or paragraph 7,
- that provision shall be replaced by the provisions of paragraph 4.
- In other cases, paragraph 4 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 4.

ARTICLE 10

Capital Gains from
Alienation of Shares
or Interests of Entities
Deriving their Value
Principally from
Immovable Property

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 1

Where:

- a) an enterprise of a Contracting Jurisdiction to a Covered Tax Agreement derives income from the other Contracting Jurisdiction and the first-mentioned Contracting Jurisdiction **treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction;**
and
- b) the **profits** attributable to that permanent establishment are **exempt from tax** in the first-mentioned Contracting Jurisdiction,

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 1

- The benefits of the Covered Tax Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting Jurisdiction on that item of income if that permanent establishment were situated in the first-mentioned Contracting Jurisdiction.
- In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting Jurisdiction, notwithstanding any other provisions of the Covered Tax Agreement.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 2

- Paragraph 1 shall not apply
- if the income derived from the other Contracting Jurisdiction described in paragraph 1
- is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment
- (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 3

- If benefits under a Covered Tax Agreement are denied pursuant to paragraph 1 with respect to an item of income derived by a resident of a Contracting Jurisdiction,
- the competent authority of the other Contracting Jurisdiction **may, nevertheless, grant these benefits with respect to that item of income**
- if, in response to a request by such resident, such **competent authority determines that granting such benefits is justified** in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 3

- The competent authority of the Contracting Jurisdiction to which a request has been made under the preceding sentence by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before either granting or denying the request

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 4

- Paragraphs 1 through 3 shall apply
- in place of or in the absence of provisions of a Covered Tax Agreement that deny or limit benefits
- that would otherwise be granted to an enterprise of a Contracting Jurisdiction
- which derives income from the other Contracting Jurisdiction
- that is attributable to a permanent establishment of the enterprise
- situated in a third jurisdiction.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 5

- A Party may reserve the right:
 - a) for **the entirety of this Article** not to apply to its Covered Tax Agreements;
 - b) for the **entirety** of this Article not to apply to its Covered Tax Agreements **that already contain the provisions described in paragraph 4;**
 - c) **for this Article** to apply only to its Covered Tax Agreements that already contain the provisions described in paragraph 4.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions – Paragraph 6

- Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 4, and if so, the **article** and **paragraph** number of each such provision.
- Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision **shall be replaced** by the provisions of paragraphs 1 through 3.
- In other cases, paragraphs 1 through 3 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with those paragraphs.

ARTICLE 11

Application of Tax
Agreements to
Restrict a Party's
Right to Tax its Own
Residents

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 1

A Covered Tax Agreement shall not affect the taxation by a Contracting Jurisdiction of its residents, except with respect to the benefits granted under provisions of the Covered Tax Agreement:

a) which require that Contracting Jurisdiction to grant to an enterprise of that Contracting Jurisdiction a correlative or corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of a permanent establishment of the enterprise or the profits of an associated enterprise;

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 1

b) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual derives income in respect of services rendered to the other Contracting Jurisdiction or a political subdivision or local authority or other comparable body thereof;

c) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual is also a student, business apprentice or trainee, or a teacher, professor, lecturer, instructor, researcher or research scholar who meets the conditions of the Covered Tax Agreement;

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 1

d) which require that Contracting Jurisdiction to provide a tax credit or tax exemption to residents of that Contracting Jurisdiction with respect to the income that the other Contracting Jurisdiction may tax in accordance with the Covered Tax Agreement (including profits that are attributable to a permanent establishment situated in that other Contracting Jurisdiction in accordance with the Covered Tax Agreement);

e) which protect residents of that Contracting Jurisdiction against certain discriminatory taxation practices by that Contracting Jurisdiction;

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 1

- f) which allow residents of that Contracting Jurisdiction to request that the competent authority of that or either Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement;
- g) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction when that individual is a member of a diplomatic mission, government mission or consular post of the other Contracting Jurisdiction;
- h) which provide that pensions or other payments made under the social security legislation of the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction;

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 1

- i) which provide that pensions and similar payments, annuities, alimony payments or other maintenance payments arising in the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction; or

- j) which otherwise expressly limit a Contracting Jurisdiction’s right to tax its own residents or provide expressly that the Contracting Jurisdiction in which an item of income arises has the exclusive right to tax that item of income.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 2

Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement stating that the Covered Tax Agreement would not affect the taxation by a Contracting Jurisdiction of its residents.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 3

A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 2.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents – Paragraph 4

- Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the **article** and **paragraph** number of each such provision.
- Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision **shall be replaced** by the provisions of paragraph 1.
- In other cases, paragraph 1 **shall supersede the provisions of the Covered Tax Agreement only to the extent** that those provisions are **incompatible** with paragraph 1.

ARTICLE 12

Artificial Avoidance
of Permanent
Establishment Status
through
Commissionnaire
Arrangements and
Similar Strategies

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 1

- Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”,
- but subject to paragraph 2,
- where a person is acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise and, in doing so,
- **habitually concludes contracts**, or
- **habitually plays the principal role** leading to the **conclusion of contracts** that are **routinely concluded without material modification** by the enterprise, **and**

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 1

- these contracts are:
 - a) in the **name of the enterprise**; or
 - b) for the **transfer** of the ownership of, or for the granting of the **right to use**, property owned by that enterprise or that the enterprise has the right to use; or
 - c) for the **provision of services** by that enterprise,
- that enterprise shall be deemed to have a permanent establishment in that Contracting Jurisdiction **in respect of any activities which that person undertakes for the enterprise**

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 1

- unless these activities,
 - ✓ if they were exercised by the enterprise through a **fixed place of business** of that enterprise situated in that Contracting Jurisdiction,
 - ✓ **would not cause that fixed place of business**
 - ✓ **to be deemed to constitute a permanent establishment**
 - ✓ **under the definition of permanent establishment** included in the Covered Tax Agreement (as it may be modified by this Convention).

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 2

- Paragraph 1 shall not apply
- where the person acting in a Contracting Jurisdiction to a Covered Tax Agreement
- on behalf of an enterprise of the other Contracting Jurisdiction
- carries on business in the first mentioned Contracting Jurisdiction
- as an independent agent and acts for the enterprise in the ordinary course of that business.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 2

- Where, however, a person acts
- exclusively or
- almost exclusively on behalf of one or more enterprises to which it is closely related,
- that person shall not be considered to be an independent agent
- within the meaning of this paragraph with respect to any such enterprise.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 3(a)

- Paragraph 1 shall apply **in place of** provisions of a Covered Tax Agreement
- **that describe the conditions**
- under which an enterprise
- shall be deemed to have a permanent establishment in a Contracting Jurisdiction
- (or a person shall be deemed to be a permanent establishment in a Contracting Jurisdiction)

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 3(a)

- in respect of an **activity**
- which a person **other than an agent of an independent status** undertakes for the enterprise,
- but only to the extent that such provisions address the situation
- in which such person has, and habitually exercises, in that Contracting Jurisdiction
- an authority to conclude contracts in the name of the enterprise.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 3(b)

- Paragraph 2 shall apply **in place of** provisions of a Covered Tax Agreement that provide that
- an **enterprise shall not be deemed to have a permanent establishment** in a Contracting Jurisdiction
- in respect of an activity **which an agent of an independent status** undertakes for the enterprise.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 4

- A Party may reserve the **right for the entirety** of this Article not to apply to its Covered Tax Agreements.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 5

- Each Party that has not made a reservation described in paragraph 4
- shall **notify** the Depositary of
- whether each of its Covered Tax Agreements
- contains a provision **described in subparagraph a) of paragraph 3,**
- as well as the **article** and **paragraph** number of each such provision.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 5

- Paragraph 1 shall apply
- with respect to a provision of a Covered Tax Agreement
- only
- where all Contracting Jurisdictions have
- made a notification with respect to that provision.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 6

- Each Party that **has not made a reservation** described in paragraph 4
- shall **notify** the Depositary of
- whether each of its Covered Tax Agreements
- contains a **provision** described in subparagraph b) of paragraph 3,
- as well as the **article** and **paragraph** number of each such provision.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies – Paragraph 6

- Paragraph 2 shall apply
- with respect to a provision of a Covered Tax Agreement
- only
- where all Contracting Jurisdictions
- have made such a notification with respect to that provision

ARTICLE 13

Artificial Avoidance
of Permanent
Establishment Status
through the Specific
Activity
Exemptions

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 1

- A Party may choose to apply
- paragraph 2 (Option A) or
- paragraph 3 (Option B) or
- to apply neither Option.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 2 - Option A

Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment,
 - whether or not that exception from permanent establishment status
 - is contingent on the activity being of a preparatory or auxiliary character;

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 2 - Option A

- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 3 - Option B

Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

(a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment,

- ✓ whether or not that exception from permanent establishment status
- ✓ is contingent on the activity being of a preparatory or auxiliary character, except to the extent that the relevant provision of the Covered Tax Agreement provides explicitly that a specific activity shall be deemed not to constitute a permanent establishment provided that the activity is of a preparatory or auxiliary character;

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 3 - Option B

- b) the maintenance of a fixed place of business solely for the purpose of carrying on, **for the enterprise**, any activity not described in subparagraph a), provided that this **activity is of a preparatory or auxiliary character**;

- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b), provided that the overall activity of the fixed place of business resulting from this combination is of a **preparatory or auxiliary character**.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 4

A **provision** of a Covered Tax Agreement (as it may be modified by paragraph 2 or 3) that **lists specific activities deemed not to constitute a permanent establishment**

- ✓ **shall not apply to a fixed place of business** that is used or maintained by an enterprise
- ✓ if the same enterprise or a closely related enterprise
- ✓ carries on business activities
- ✓ **at the same place or at another place in the same Contracting Jurisdiction and:**

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 4

- a) that place or other place **constitutes a permanent establishment** for the enterprise or the closely related enterprise under the provisions of a Covered Tax Agreement defining a permanent establishment; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises **at the same place**, or by the same enterprise or closely related enterprises **at the two places**, is not of a **preparatory or auxiliary character**,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are **part of a cohesive business operation**.

MLI 13(4)

FPOB₁ of E₁

Will not get exempt PE Status if

E₁

OR

E₂

Carries on business activities at

Cont..

Cont..

Carries on business activities at

FPOB₁


FPOB₂

Satisfies

A + C

OR

B + C

- A = FPOB₁ or FPOB₂ constitutes PE of E1 or E2
- B = Overall activity resulting from combination of activities of
 1. E₁ & E₂ at FPOB₁
 2. E₁ at FPOB₁ and FPOB₂
 3. E₂ at FPOB₁ and FPOB₂
 4. E₁ & E₂ at FPOB₁ and FPOB₂
- C = Business activities referred to above constitute complementary functions that are part of cohesive business operation

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 5(a)

- Paragraph 2 or 3 shall apply
- in place of the relevant parts of provisions of a Covered Tax Agreement that list specific activities that are deemed not to constitute a permanent establishment
- even if the activity is carried on through a fixed place of business
- (or provisions of a Covered Tax Agreement that operate in a comparable manner)

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 5(b)

- Paragraph 4 shall apply
- to provisions of a Covered Tax Agreement (as they may be modified by paragraph 2 or 3)
- that list specific activities that are deemed not to constitute a permanent establishment
- even if the activity is carried on through a fixed place of business
- (or provisions of a Covered Tax Agreement that operate in a comparable manner).

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 6

A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for paragraph 2 not to apply to its Covered Tax Agreements
 - that explicitly state that a list of specific activities shall be deemed not to constitute a permanent establishment
 - ✓ only if each of the activities is of a preparatory or auxiliary character;
- c) for paragraph 4 not to apply to its Covered Tax Agreements.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 7

- Each Party that chooses to apply an Option under paragraph 1
- shall notify the Depositary of its choice of Option.
- Such notification shall also include
 - ✓ the list of its Covered Tax Agreements which contains a provision described in subparagraph a) of paragraph 5,
 - ✓ as well as the article and paragraph number of each such provision.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 7

- An **Option shall apply** with respect to a provision of a Covered Tax Agreement
- only where **all Contracting Jurisdictions**
- have **chosen to apply the same Option** and
- have made such a **notification** with respect to that provision.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 8

- Each Party that has not made a reservation
- described in subparagraph a) or c) of paragraph 6 and
- does not choose to apply an Option under paragraph 1
- shall notify the **Depositary** of
 - ✓ whether each of its Covered Tax Agreements contains a provision described in subparagraph b) of paragraph 5,
 - ✓ as well as the article and paragraph number of each such provision.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions– Paragraph 8

- Paragraph 4 shall apply with respect to a provision of
- a Covered Tax Agreement
- only
- where all Contracting Jurisdictions
- have made a notification
- with respect to that provision under this paragraph or paragraph 7.

ARTICLE 14

Splitting-up of Contracts

Article 14 – Splitting-up of Contracts– Paragraph 1

- For the sole purpose of determining
- whether the **period** (or periods)
- referred to in a provision of a Covered Tax Agreement
- that **stipulates** a **period** (or periods) of time
- **after which** specific **projects or activities** shall **constitute a permanent establishment** has been exceeded:

Article 14 – Splitting-up of Contracts– Paragraph 1(a)

(a) Where an enterprise of a Contracting Jurisdiction carries on activities in the other Contracting Jurisdiction

- at a place that constitutes a building site, construction project, installation project or other specific project identified in the relevant provision of the Covered Tax Agreement, or
- carries on supervisory or consultancy activities in connection with such a place, in the case of a provision of a Covered Tax Agreement that
 - ✓ refers to such activities, and
 - ✓ these activities are carried on during one or more periods of time that,
 - ✓ in the aggregate, exceed 30 days
 - ✓ without exceeding the period or periods referred to in the relevant provision of the Covered Tax Agreement; and

Article 14 – Splitting-up of Contracts– Paragraph 1(b)

(b) Where connected activities are carried on in that other Contracting Jurisdiction at (or, where the relevant provision of the Covered Tax Agreement applies to supervisory or consultancy activities, in connection with)

- the same building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement
- during different periods of time,
- each exceeding 30 days,
- by one or more enterprises closely related to the first-mentioned enterprise,

Article 14 – Splitting-up of Contracts– Paragraph 1 (a) & (b)

- These different periods of time
- shall be added to the aggregate period of time
- during which the first mentioned enterprise
- has carried on activities
- at that building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement.

MLI 14

Site/Project in Source State

E₁

Activities

**(A) One/more period
exceeding 30 days in
aggregate but not PE
threshold**

E₂

**Connected
Activities**

**(B) Different periods
each exceeding 30
days**

At same Site/Project

Cont..

Cont..

At Same Site/Project

(A) + (B) is considered for PE threshold for E_1

Article 14 – Splitting-up of Contracts– Paragraph 2

Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement

- to the extent that such provisions address
- the division of contracts into multiple parts
- to avoid the application of a time period or periods
- in relation to the existence of a permanent establishment
- for specific projects or activities described in paragraph 1

Article 14 – Splitting-up of Contracts– Paragraph 3

A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply with respect to provisions of its Covered Tax Agreements relating to the exploration for or exploitation of natural resources.

Article 14 – Splitting-up of Contracts– Paragraph 4

- Each Party that **has not made a reservation** described in subparagraph a) of paragraph 3 shall **notify the Depository** of whether each of its Covered Tax Agreements contains a provision described in paragraph 2
 - ✓ **that is not subject to a reservation** under subparagraph b) of paragraph 3, and if so, the **article** and **paragraph** number of each such provision.
- Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be **replaced** by the provisions of paragraph 1 to the extent provided in paragraph 2.
- In **other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement** only to the extent that those provisions are incompatible with paragraph 1

ARTICLE 15

Definition of a Person Closely Related to an Enterprise

Article 15 – Definition of a Person Closely Related to an Enterprise- Paragraph 1

- For the purposes of the provisions of a Covered Tax Agreement that are modified by
 - paragraph 2 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies),
 - paragraph 4 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), or
 - paragraph 1 of Article 14 (Splitting-up of Contracts),
- a person is **closely related to an enterprise if,**
- based on all the relevant facts and circumstances,
- one has control of the other or both are under the control of the same persons or enterprises.

Article 15 – Definition of a Person Closely Related to an Enterprise- Paragraph 1

- In any case, a person shall be considered to be closely related to an enterprise
- if **one possesses** directly or indirectly
 - ✓ more than **50 per cent of the beneficial interest in the other** (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or
- if **another person possesses** directly or indirectly
 - ✓ more than **50 per cent of the beneficial interest** (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) **in the person and the enterprise.**

Article 15 – Definition of a Person Closely Related to an Enterprise- Paragraph 2

A Party that has made the reservations

- described in paragraph 4 of **Article 12** (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies),
- subparagraph a) or c) of paragraph 6 of **Article 13** (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), and
- subparagraph a) of paragraph 3 of **Article 14** (Splitting-up of Contracts)
- may reserve the **right for the entirety of this Article** not to apply to the Covered Tax Agreements to which those reservations apply.

ARTICLE 16

Mutual Agreement Procedure

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 1

Where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of either Contracting Jurisdiction.

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 2

The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement.

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 3

The competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement.

They may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(a)(i)

The first sentence of paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement (or parts thereof) that provide that where a person considers that the actions of one or both of the Contracting Jurisdiction result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of the Contracting Jurisdiction of which that person is a resident including provisions under which, if the case presented by that person comes under the provisions of a Covered Tax Agreement relating to non-discrimination based on nationality, the case may be presented to the competent authority of the Contracting Jurisdiction of which that person is a national.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(a) (ii)

The second sentence of paragraph 1 shall apply in place of provisions of a Covered Tax Agreement that provide that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, or in the absence of a provision of a Covered Tax Agreement describing the time period within which such a case must be presented.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(b)(i)

The first sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authority that is presented with the case by the person referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(b) (ii)

The second sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement providing that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(c)(i)

The first sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 4(c)(ii)

The second sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(a)

A Party may reserve the right:

For the first sentence of paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction),

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(a)

Cont...

where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or,

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(a)

Cont....

if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified;

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(b)

For the second sentence of paragraph 1 not to apply to its Covered Tax Agreements that do not provide that the case referred to in the first sentence of paragraph 1 must be presented within a specific time period on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by ensuring that for the purposes of all such Covered Tax Agreements the taxpayer referred to in paragraph 1 is allowed to present the case within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement;

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(c)

for the second sentence of paragraph 2 not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements:

- i) any agreement reached via the mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Jurisdictions; or
- ii) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(c)(ii)(A)

The Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 5(c)(ii)(B)

the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default).

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 6(a)

Each Party that has not made a reservation described in subparagraph a) of paragraph 5 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in clause i) of subparagraph a) of paragraph 4, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the first sentence of paragraph 1. In other cases, the first sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with that sentence.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 6(b)(i)

Each Party that has not made the reservation described in subparagraph b) of paragraph 5 shall notify the Depository of:

the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; a provision of a Covered Tax Agreement shall be replaced by the second sentence of paragraph 1 where all Contracting Jurisdictions have made such a notification with respect to that provision; in other cases, subject to clause ii), the second sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the second sentence of paragraph 1

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 6(b)(ii)

the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; the second sentence of paragraph 1 shall not apply to a Covered Tax Agreement where any Contracting Jurisdiction has made such a notification with respect to that Covered Tax Agreement

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 6(c)

Each Party shall notify the Depository of:

- i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph b) of paragraph 4; the first sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;

- ii) in the case of a Party that has not made the reservation described in subparagraph c) of paragraph 5, the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph b) of paragraph 4; the second sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.

ARTICLE 16 - Mutual Agreement Procedure – Paragraph 6(d)

Each Party shall notify the Depository of:

- i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph c) of paragraph 4; the first sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;
- ii) the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph c) of paragraph 4; the second sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.

ARTICLE 17

Corresponding Adjustments

ARTICLE 17 - Corresponding Adjustments

1. Where a Contracting Jurisdiction includes in the profits of an enterprise of that Contracting Jurisdiction — and taxes accordingly — profits on which an enterprise of the other Contracting Jurisdiction has been charged to tax in that other Contracting Jurisdiction and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting Jurisdiction shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Covered Tax Agreement and the competent authorities of the Contracting Jurisdictions shall if necessary consult each other.

ARTICLE 17 - Corresponding Adjustments

2. Paragraph 1 shall apply in place of or in the absence of a provision that requires a Contracting Jurisdiction to make an appropriate adjustment to the amount of the tax charged therein on the profits of an enterprise of that Contracting Jurisdiction where the other Contracting Jurisdiction includes those profits in the profits of an enterprise of that other Contracting Jurisdiction and taxes those profits accordingly, and the profits so included are profits which would have accrued to the enterprise of that other Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises.

ARTICLE 17 - Corresponding Adjustments

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 2;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in the absence of a provision referred to in paragraph 2 in its Covered Tax Agreement:
 - i) it shall make the appropriate adjustment referred to in paragraph 1; or
 - ii) its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure; (cont..)

ARTICLE 17 - Corresponding Adjustments

3. A Party may reserve the right:

(cont..)

c) in the case of a Party that has made a reservation under clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure), for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in its bilateral treaty negotiations it shall accept a treaty provision of the type contained in paragraph 1, provided that the Contracting Jurisdictions were able to reach agreement on that provision and on the provisions described in clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure).

ARTICLE 17 - Corresponding Adjustments

4. Each Party that has not made a reservation described in paragraph 3 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.