The background of the slide is a dense collection of small, colorful globes. Each globe shows a different map of the world with various color schemes for continents and oceans. The globes are arranged in a way that they overlap, creating a sense of depth and global connectivity. The colors used include shades of blue, green, yellow, red, and pink.

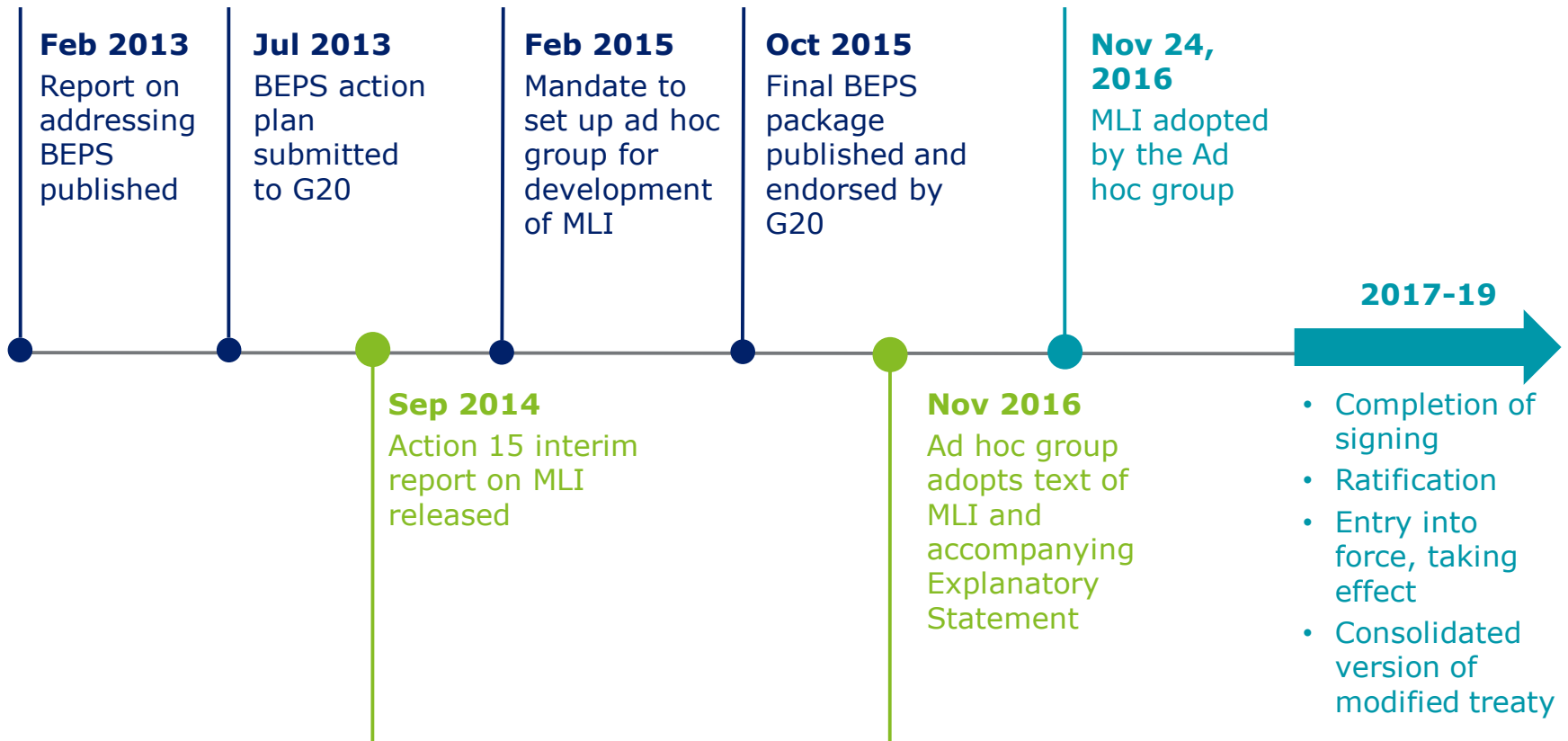
Analysis of MLI and Its Operations

Radhakishan Rawal

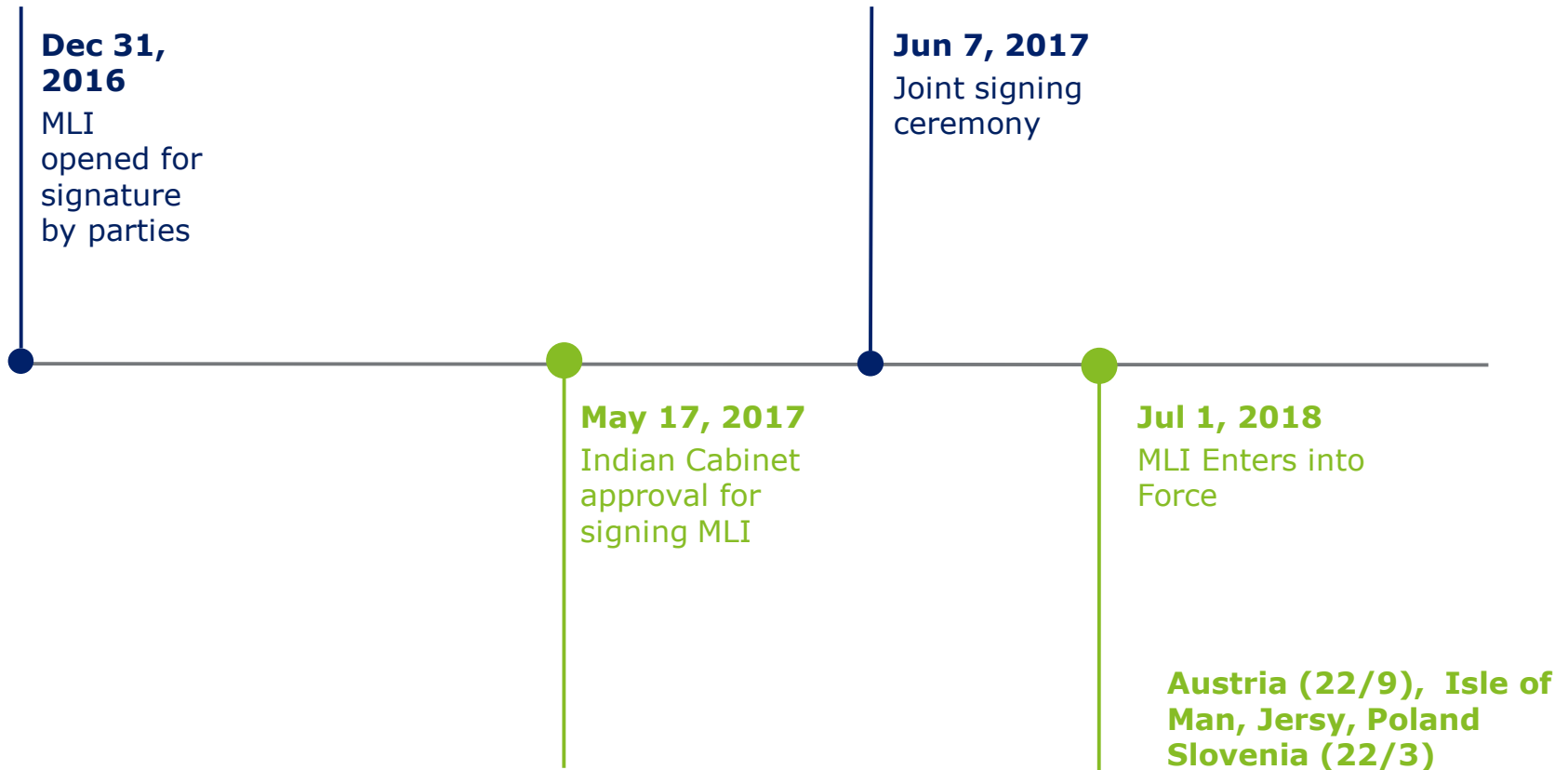
Partner – Deloitte Haskins and Sells LLP

October 5, 2018

Relevant dates and events



Relevant dates and events



Implementation of BEPS Package

- Amendment of domestic laws
- Amendment of OECD Model Convention
- Amendment of OECD Commentary
- Amendment of tax treaties (more than 3000)

MLI – An instrument to amend all tax treaties in one go!

One Negotiation, One Signature, One Ratification

BEPS – Action Plans to be implemented through treaties

Action 2: Neutralizing the effects of hybrid mismatch arrangements

Action 6: Preventing treaty abuse

Action 7: Preventing the artificial avoidance of PE status

Action 14: Making dispute resolution mechanisms more effective

Action 15: Multilateral instrument

Operation and structure of the MLI

Part	Title	Articles	BEPS Action Plans
I	Scope and interpretation of terms	1 & 2	-
II	Hybrid mismatches <ul style="list-style-type: none">• Transparent entities• Dual resident entities• Methods for elimination of double taxation	3 to 5	Action Plans 2 and 6
III	Treaty abuse <ul style="list-style-type: none">• Purpose of tax treaties (minimum standard)• Prevention of treaty abuse (minimum standard)• Dividend transfer transactions• Capital gains on interests in land rich entities• Third country PEs• Taxation of own residents	6 to 11	Action Plan 6
IV	Avoidance of PE status <ul style="list-style-type: none">• Commissionaires and similar arrangements• Specific activity exemptions• Splitting-up of contracts• Definition of a person closely related to an enterprise	12 to 15	Action Plan 7
V	Improving dispute resolution (minimum standard)	16 & 17	Action Plan 14
VI	Arbitration	18 to 26	
VII	Final provisions	27 to 36	-

MLI Articles vis-à-vis 2017 Update to OECD Model Tax Convention

Article of MLI	Article of OECD Model Tax Convention
Article 1 – Scope of the Convention	-
Article 2 – Interpretation of Terms	-
Article 3 - Transparent Entities	Article 1(2)
Article 4 – Dual Resident Entities	Article 4(3)
Article 5 – Application of Methods for Elimination of Double Taxation	Articles 23A and 23B
Article 6 – Purpose of a Covered Tax Agreement	Title and Preamble
Article 7 – Prevention of Treaty Abuse	Article 29
Article 8 – Dividend Transfer Transactions	Article 10(2)(a)
Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Article 13(4)
Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents	Article 1(3)

MLI Articles vis-à-vis 2017 Update to OECD Model Tax Convention

Article of MLI	Article of OECD Model Tax Convention
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies	Article 5(5) & 5(6)
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Article 5(4) / (4.1)
Article 14 - Splitting-up of Contracts	Commentary on Article 5 (para 22, 51, 52)
Article 15 – Definition of a Person Closely Related to an Enterprise	Article 5(8)
Article 16 – Mutual Agreement Procedure	Articles 25
Article 17– Corresponding Adjustments	Article 9 (2)
Article 18 – Choice to Apply Part VI (Arbitration)	Article 25(5)
Article 19 – Mandatory Binding Arbitration	Article 25 (5)
Article 20 – Appointment of Arbitrators	-
Article 21 – Confidentiality of Arbitration Proceedings	-

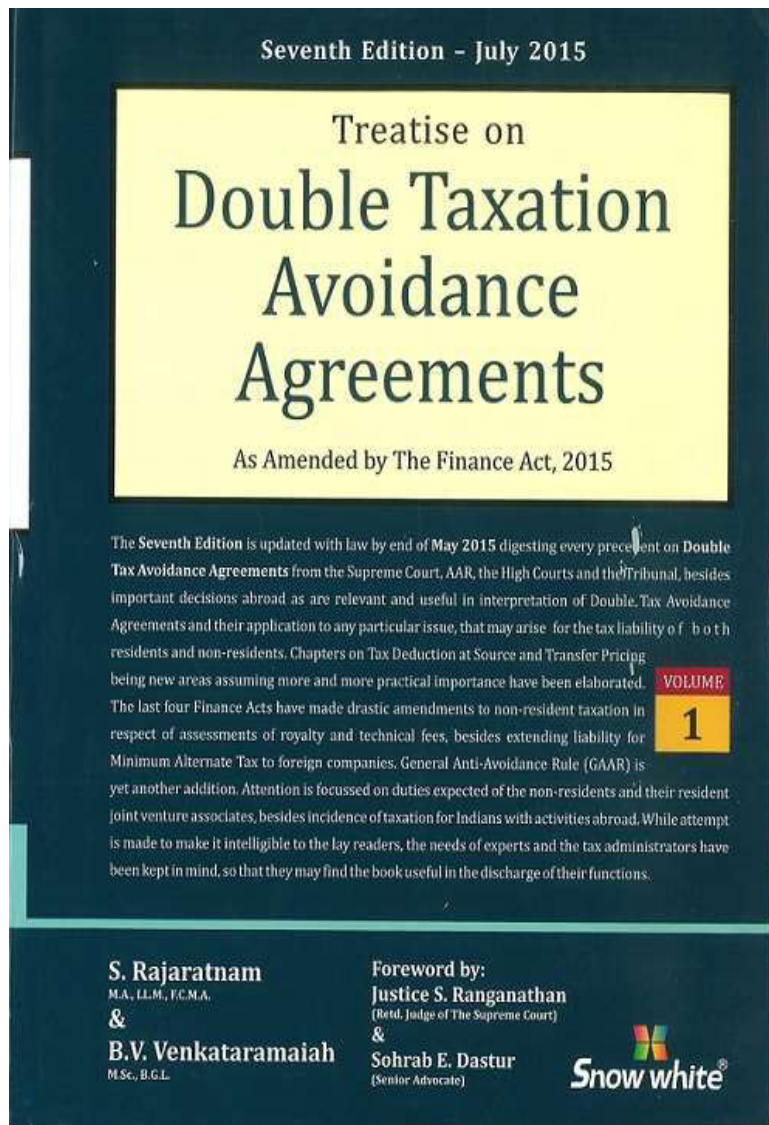
Modifies operation of existing tax treaties, with significant flexibility

- MLI **modifies the operation** of existing tax treaties between parties
 - None of the bilateral double tax treaties will actually be amended
 - MLI and tax treaty have to be read together
- Each party to the MLI specifies which existing treaties the MLI applies to (Covered Tax Agreements - CTAs)
- Flexibility to implement BEPS tax treaty measures in various ways
 - **Choices** where a minimum standard can be satisfied in multiple ways
 - **Choices** to apply optional and alternative provisions
 - **Reservations** to opt out of provisions or parts of provisions that are not minimum standards (either with respect to all CTAs, or a subset of CTAs with defined characteristics)
- Generally reservations operate symmetrically but choices may sometimes operate asymmetrically

Minimum Standards

- Action 5 – Harmful Tax Practices – No corresponding article in MLI
- Action 6 – Treaty Abuse – Article 6 and 7
 - Principal purpose test (PPT)
 - PPT plus Limitations on Benefits (LOB) provision – LOB can be either simplified or detailed
 - Detailed LOB provision plus anti-conduit arrangement
- Action 13 – CbCR – Section 286
- Action 14 – Making Dispute Resolution Mechanisms more effective – Article 16(1) – (3)

How DTAAs are to be read?



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**Multilateral
Instrument** Multilateral
Convention
to Implement Tax
Treaty Related
Measures to
Prevent
Base Erosion
and
Profit Shifting

MLI amends text of the DTAAs / CTAs?

- **Article 1 – Scope of the Convention**

This Convention modifies all Covered Tax Agreements as defined in subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms).

- **Article 4(2)** - *Paragraph shall apply in place of or in absence of*
- **Article 6(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),”.

Understanding operations of MLI

Article 4(3) of India - Australia

"3. Where, by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated."

Article 4 of the MLI

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, 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 of the MLI

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.

Compatibility Clauses

Term used	When applicable	Impact
“in place of”	There is an existing provision in the CTA	Existing CTA provision is replaced
“applies to” or “modifies”	There is an existing provision in the CTA	Application of an existing provision is amended without replacing it
“in absence of”	The provision is absent in the CTA	The provision is added to the CTA
“in place of” or “in absence of”	The provision is present or absent in the CTA	The existing provision is replaced / superseded or MLI provision is added to CTA (in absence of existing provision)

Article 4 of the MLI

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 of the MLI

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 of the MLI

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 of the MLI

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.”;

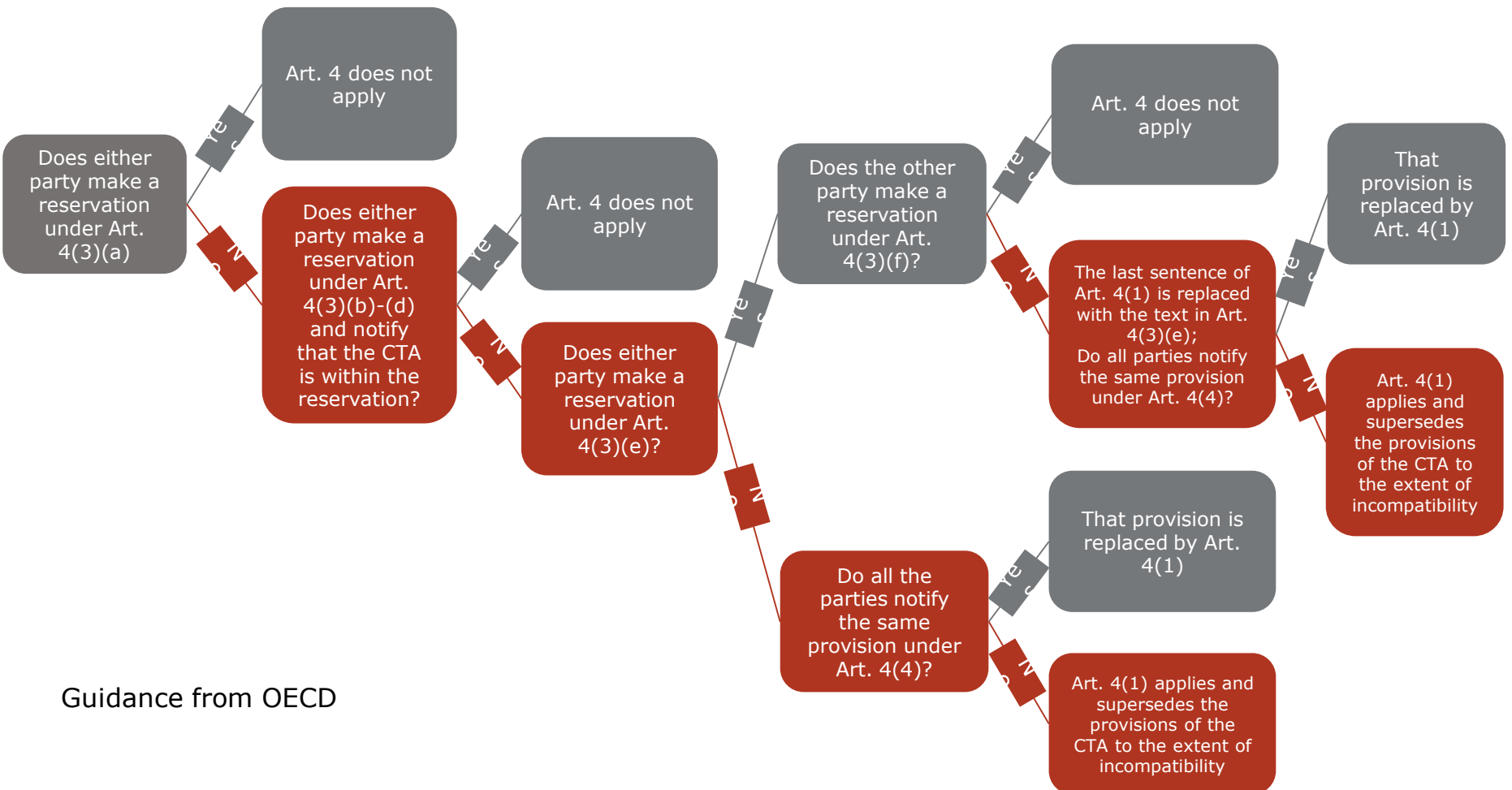
f) for the entirety of this Article not to apply to its Covered Tax Agreements with Parties that have made the reservation described in subparagraph e).

Article 4 of the MLI

Analyse the notifications made by:

- Australia
- Belgium
- Finland
- Indonesia
- UK

Article 4 Matching



Guidance from OECD

Lets consider one more Article

Article 6 of the MLI

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),”.

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.

Article 6 of the MLI

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,”.

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.

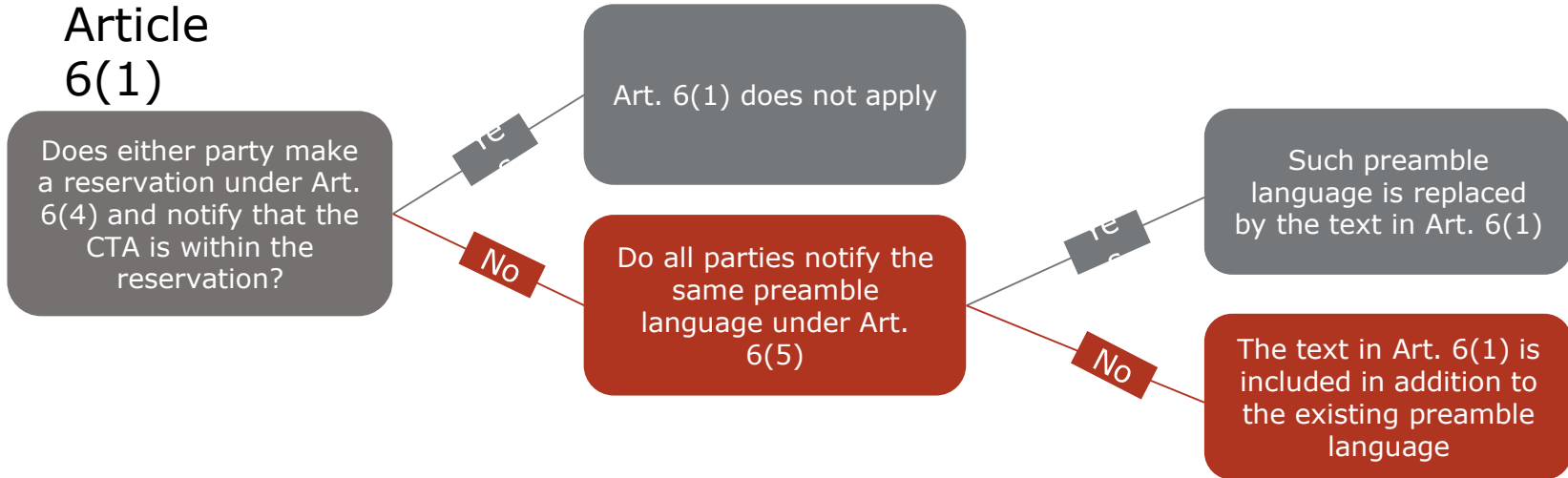
Article 6 of the MLI

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.

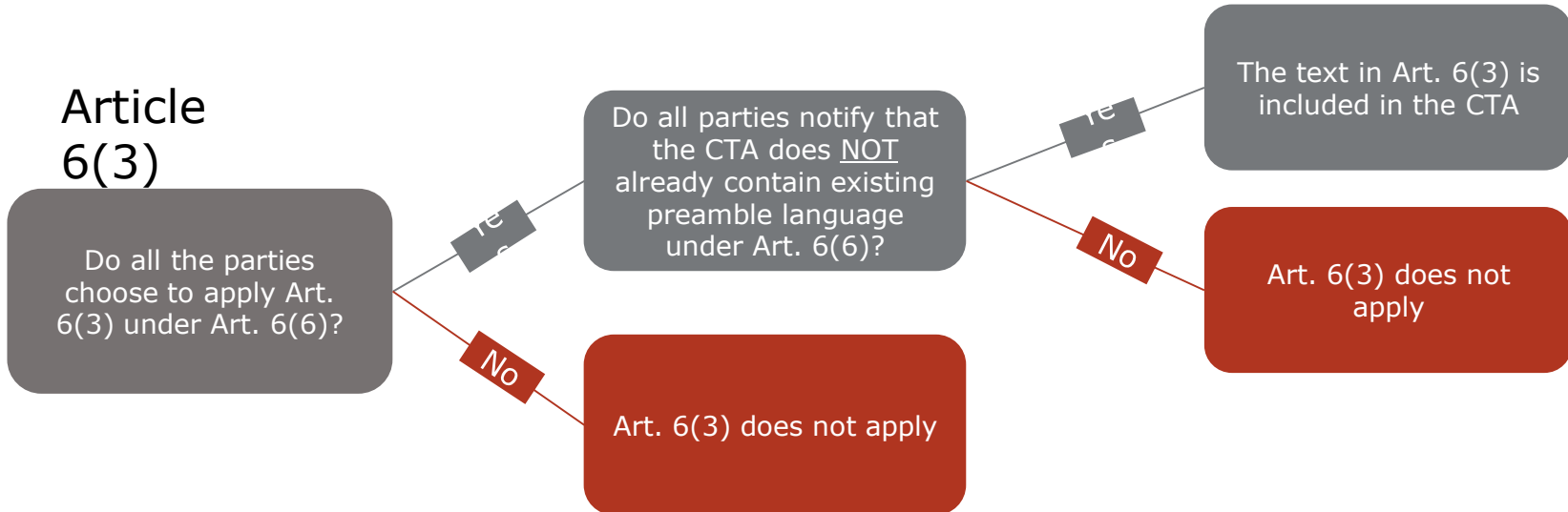
6. Each Party that chooses to apply paragraph 3 shall notify the Depository of its choice. Such notification shall also include the list of its Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in 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 6 Matching process

Article 6(1)



Article 6(3)



Article 28 - Reservations

- Unless explicitly provided, reservations shall modify the convention for the reserving party in its relation with another party and to the same extent for the other party in its relation with the reserving party
- No reservations may be made except those expressly permitted under each Article. In the case of reservations on certain provisions, a list of agreements, the article and paragraph number of each relevant provision that are within the scope of the reservation must be provided
- Reservation shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval
 - If reservation are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless it was explicitly specified that it is to be considered definitive
 - If reservations are not made at the time of signature, a provisional list of expected reservations shall be provided to the depository at that time
- Any party which has made a reservation may at any time withdraw it or replace it with a more limited reservations by means of notification to the depository
- Additional reservation is possible in respect of a new agreement subsequently notified

Different types of reservations and its implications

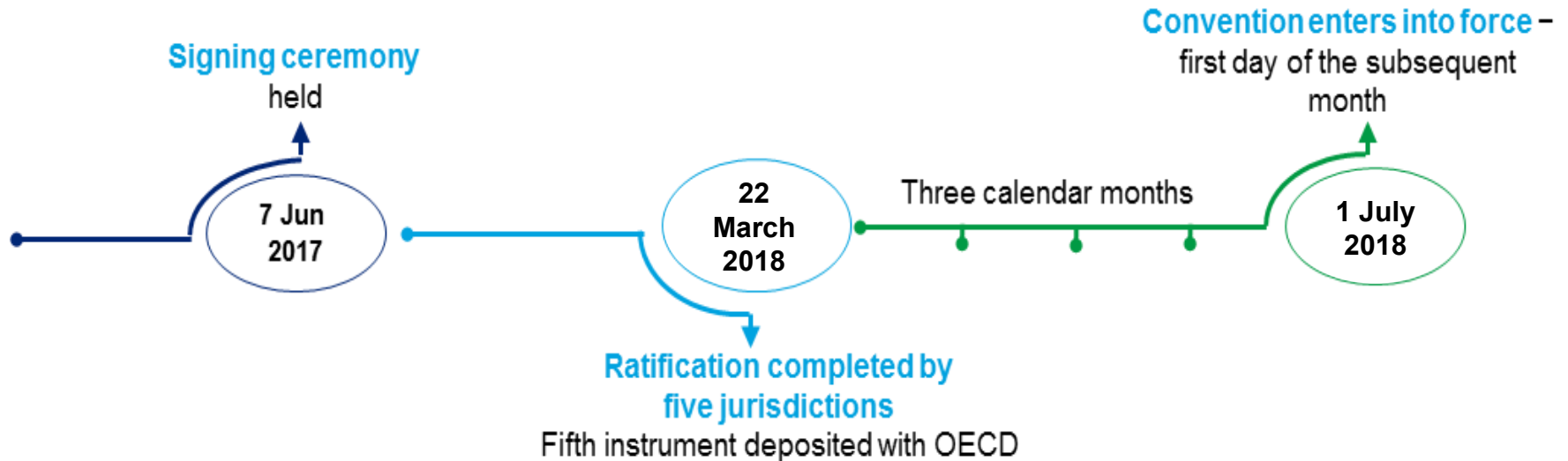
- Reservation in MLI articles
- Reservation on the Article of OECD MC
- Observations on the OECD Commentary
- Position on the Article of OECD MC
- Position on the OECD Commentary

Article 29 - Notifications

- Notifications as required in each Article shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval
 - If notifications are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless it was explicitly specified that it is to be considered definitive
 - If notifications are not made at the time of signature, a provisional list of expected notifications shall be provided at that time
- A party may extend at any time the list of agreements notified by means of notification to the depository and
 - Notify whether the agreement falls within the scope of any of the reservations made
 - May make a new reservation described in para 8 of Article 28 if the additional agreement would be the first to fall within the scope of such a reservation

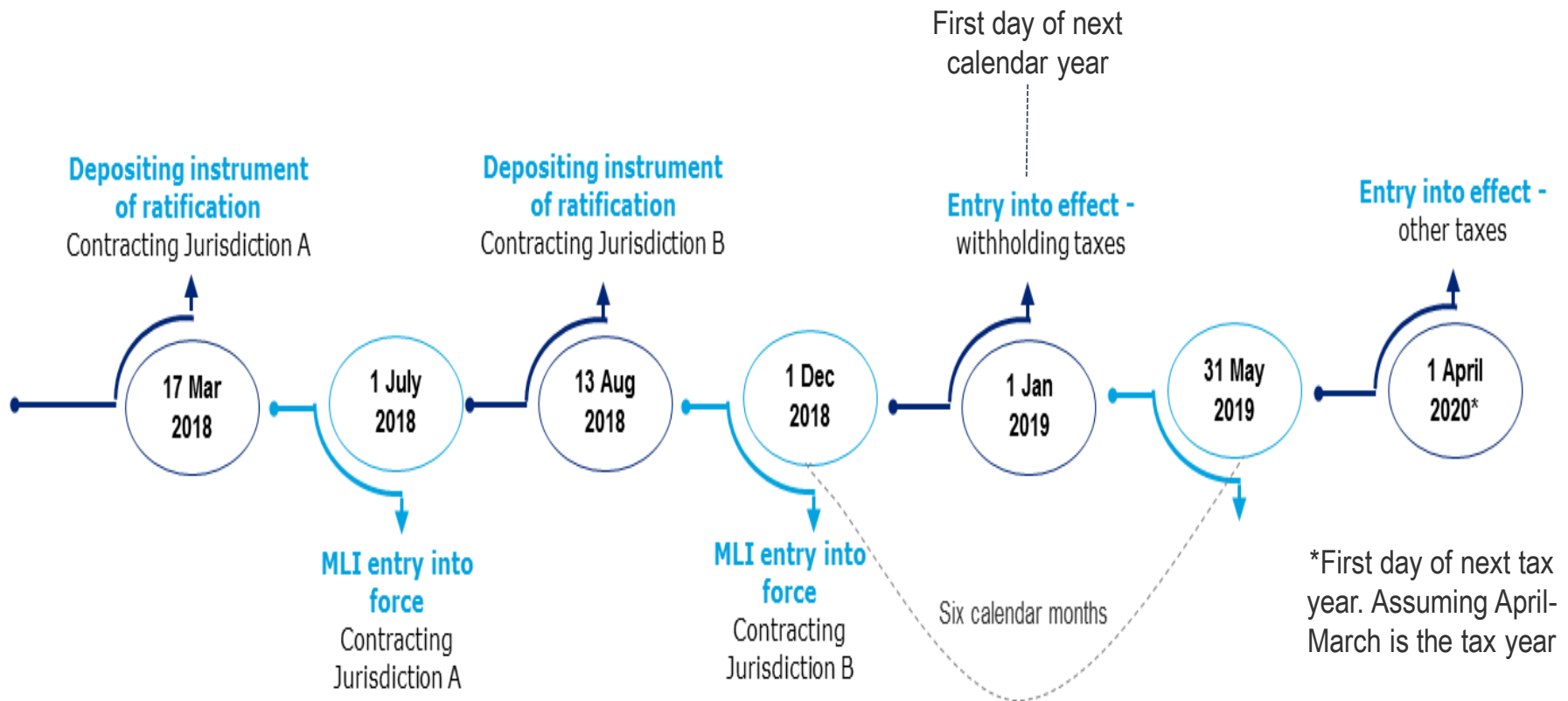
Entry into force
and
Entry into Effect

Entry into force - Illustration



- Entry into force for subsequent instruments deposited – first day of the month following the expiry of 3 calendar months beginning on the date of such subsequent deposit

Entry into effect - Illustration



Ratification

- Domestic law process
 - Parliamentary approvals required
 - Parliamentary approvals not required

Final Provisions

Articles 30, 31

Article 30 – Subsequent modifications of CTAs

- The provisions of MLI are without prejudice to subsequent modifications to a CTA by contracting jurisdictions

Article 31 – Conference of the parties

- Any party may request a conference for taking any decisions by communicating a request to the depository. Depository shall convene a conference, provided request is supported by one-third of the parties within 6 calendar months

Articles 32, 33

Article 32 – Interpretation and implementation

- Any question arising as to the interpretation or implementation of provisions of:
 - CTA as they are modified by this convention ~ In accordance with the provisions of the CTA relating to the resolution by mutual agreement
 - MLI ~ conference of the parties

Article 33 – Amendment

- Any party may propose an amendment to MLI and conference may be convened in accordance with Article 31 to consider the proposal

Withdrawal from MLI (Article 37)

- A Party may at any time withdraw from MLI
- Implications of “withdrawal”
 - If made before the MLI has entered into force in respect of a CTA
 - If made after the MLI has entered into force in respect of a CTA

Depositary (Article 39)

- The Secretary General of OECD to act as a Depositary
- Role of Depositary
 - Notify certain developments to the signatories within 30 days
 - Maintain publicly available list of
 - ✓ CTAs
 - ✓ Reservations made by Parties
 - ✓ Notifications made by Parties
 - Serve Conference of the Parties (Article 31)



Certain Issues / Observations

Implications of different terminology

MLI term \neq Term used in the OECD MC

MLI term \neq Term used in the Act

Implications of different terminology

MLI terms:

Multilateral Convention to Implement Tax Treaty Related Measures To Prevent Base Erosion and Profit Shifting (**Convention**)

Article 2(1) :

Covered Tax Agreement, Party, Contracting Jurisdictions, Signatory

Article 2(2)

As regards the application of this Convention at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the relevant Covered Tax Agreement.

Implications of different terminology

DTAA / CTA terms:

Article 3(1) - Various terms

Article 3(2)

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Term used but not defined in MLI

Guidance from Explanatory Statement

Accordingly, the provisions contained in Articles 3 through 17 should be interpreted in accordance with the ordinary principle of treaty interpretation, which is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. In this regard, the object and purpose of the Convention is to implement the tax treaty-related BEPS measures. The commentary that was developed during the course of the BEPS Project and reflected in the Final BEPS Package has particular relevance in this regard.

Term used but not defined in MLI

- Term used in the MLI : Taxable period
- Term used in the CTA : Fiscal year
- Term used in the Act : Previous year

Later in time

- MLI follows the general legal principle that when two rules apply to the same subject matter, the later in time prevails.
- When the parties fail to notify positions.

MLI as an "Open Offer"

24.Indeed, this is the standard approach for multilateral treaties which remain open for signature in the future, since a government does not know at the time of ratification which other jurisdictions will become parties to the treaty and what position they will take under the treaty. It is also part of the inherent design of the MLI: there is an "open offer" by a jurisdiction to its listed treaty partners to modify bilateral tax treaties in line with its MLI Position.

Steps to apply MLI

- Whether Country A has signed MLI?
- Whether Country B has signed MLI?
- Whether Country A has notified treaty between A and B as a CTA?
- Whether Country B has also notified the treaty between A and B as a CTA?
- Check the Notifications and reservations on each of the Article of both the Countries

MLI and Indian perspective

Indian perspective


- India has notified 93 jurisdictions (out of 94 jurisdictions with whom India has tax treaty) to be covered by MLI. Taipei has been excluded by India
- 57 out of 94 tax treaty partners have signed MLI till 24 January 2018
- The following jurisdictions have not notified tax treaty with India under MLI
 - China
 - Germany
 - Mauritius
- Indian tax treaties with the above jurisdictions shall not be impacted by the MLI

Jurisdictions

Signatories – 84 Countries*

Andorra	Chile	Estonia	Iceland	Korea	Netherlands	San Marino	Switzerland
Argentina	China	Fiji	India	Kuwait	New Zealand	Saudi Arabia	Tunisia
Armenia	Colombia	Finland	Indonesia	Latvia	Nigeria	Senegal	Turkey
Australia	Costa Rica	France	Ireland	Liechtenstein	Norway	Serbia	UAE
Austria	Côte d'Ivoire	Gabon	Isle of Man	Lithuania	Pakistan	Seychelles	UK
Barbados	Croatia	Georgia	Israel	Luxembourg	Panama	Singapore	Ukraine
Belgium	Curacao	Germany	Italy	Malaysia	Peru	Slovak Rep.	Uruguay
Bulgaria	Cyprus	Greece	Jamaica	Malta	Poland	Slovenia	
Burkina Faso	Czech Rep.	Guernsey	Japan	Mauritius	Portugal	South Africa	
Cameroon	Denmark	Hong Kong	Jersey	Mexico	Romania	Spain	
Canada	Egypt	Hungary	Kazakhstan	Monaco	Russia	Sweden	

Jurisdictions which have expressed intent to sign

 Treaty partners with India

Algeria, Estonia, Kazhakastan, Lebanon, Oman, Swaziland


* Status as of 27 September 2018

Indian perspective

58 treaty partners have signed MLI*

Treaty partners who have not signed MLI*

Albania	Ethopia	Mongolia	Nepal	Syrian Arab Republic	Turkmenistan
Bangladesh	Jordan	Montenegro	Oman	Taipei	Uganda
Belarus	Kenya	Morocco	Phillipines	Tajikistan	USA
Bhutan	Kyrgyz Republic	Mozambique	Qatar	Tanzania	Uzbekistan
Botswana	Libya	Myanmar	Srilanka	Thailand	Vietnam
Brazil	Macedonia	Namibia	Sudan	Trinidad & Tobago	Zambia

 Jurisdiction which has expressed intent to sign

* Status as of 27 September 2018

Final Text of tax treaties

Code Decoded

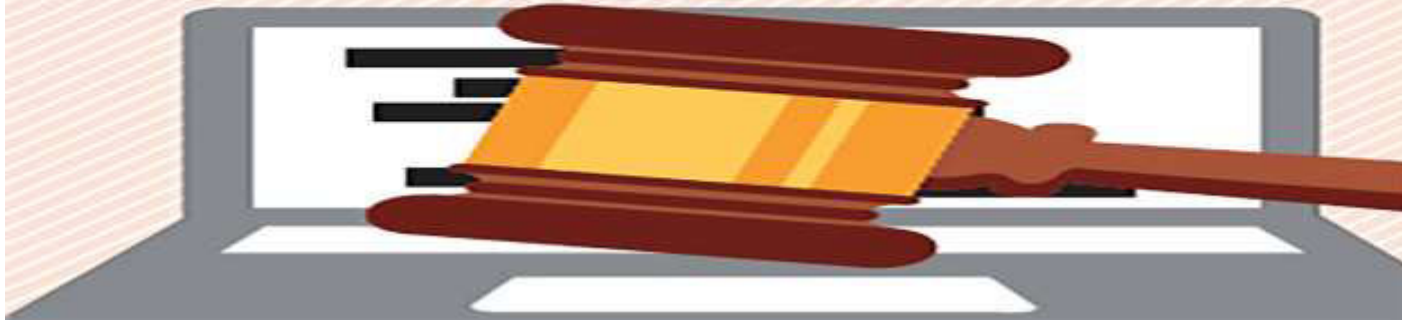
An online portal will host all laws, rules and regulations

Mobile version of the portal will also be available for easy access

Delhi High Court forced the compilation following a writ petition

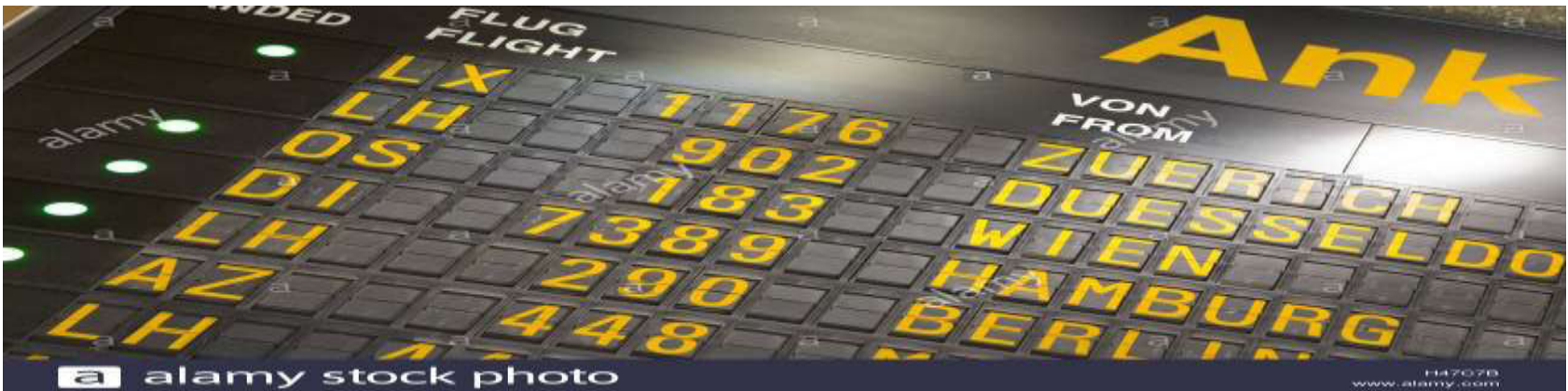
Ministries and departments are pulling out all notifications

Cabinet secretariat monitoring the entire process



This is happening thanks to a 2016 writ petition in the Delhi High Court filed by Vansh Sharad Gupta seeking online access to Indian laws. The high court has been regularly monitoring progress on its directions given in 2017 via status reports.

Who has to do this?



Who has to do this?

- Governments?
- Publishers?
- OECD?
- Professionals?
- Professional bodies?

Reference Material

- MLI
- Explanatory Statement to MLI
- Provisional Notifications by the countries
- Other guidance from OECD
 - Presentation Explaining Matching of reservations and Notifications
 - Note by OECD Directorate of Legal Affairs
 - FAQ on MLI
 - OECD MLI Tool kit
 - Others

Thank You

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Views expressed in this presentation, if any, are personal view of the author.*