

Mumbai  
5<sup>TH</sup> OCTOBER, 2019

# **MLI Implementation In India & Global Trends**

## **Key Issues and What Next?**

*by*  
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COMMISSIONER OF INCOME TAX

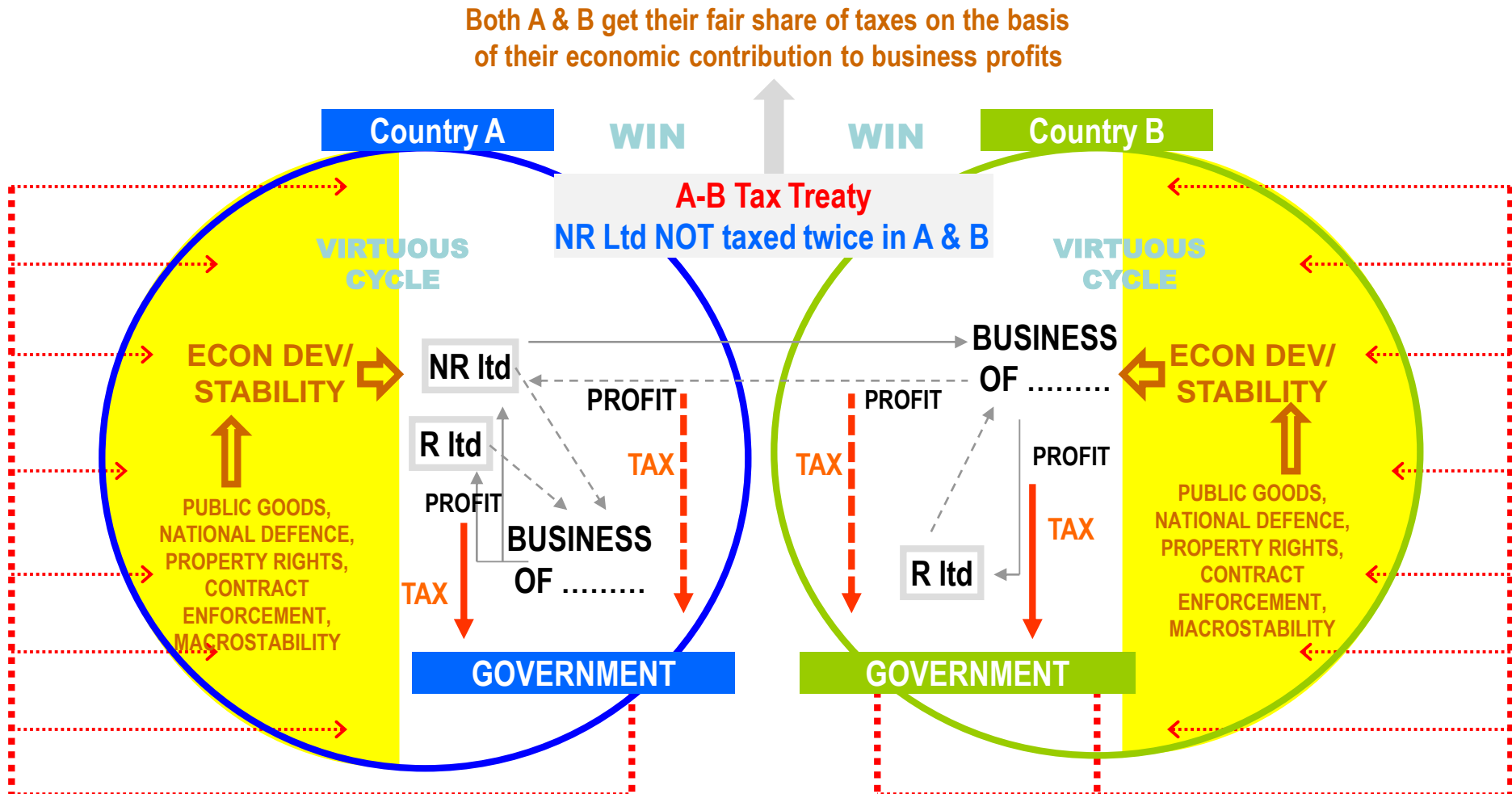
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# We wish to discuss

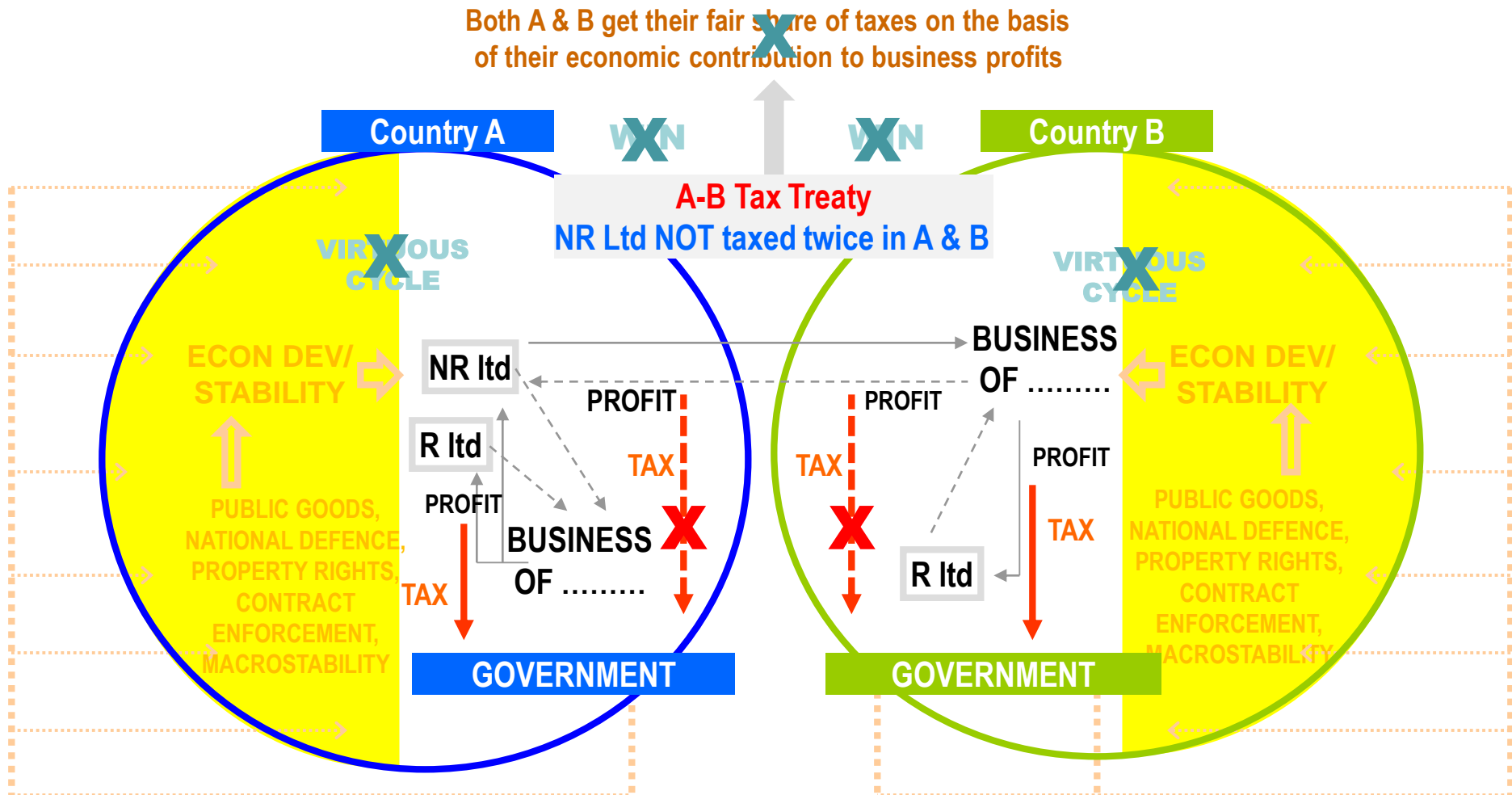
- **Why is addressing BEPS Necessary?**
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA
- Individual Provision of MLI : Articles 3 -17
  - ☐ Substantial Provision
  - ☐ Background (where Relevant)
  - ☐ Position of India & Treaty Partners
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- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Why is everyone bothered about BEPS?



Avoidance of double taxation & a fair division of taxes according to economic contribution of tax distribution to profits lead to WIN-ALL situation → STABLE EQUILIBRIUM

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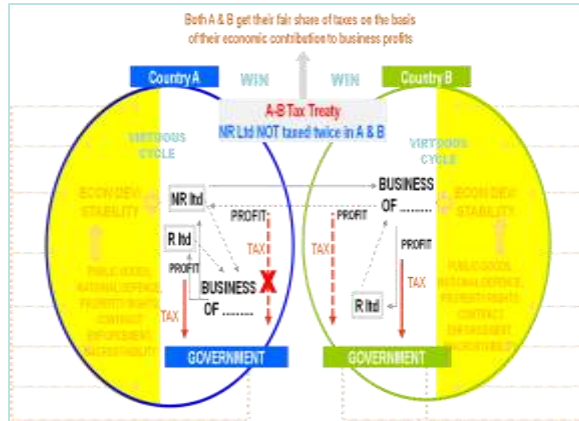


Avoidance of double taxation & a fair division of taxes according to economic contribution of tax distribution to profits lead to WIN-ALL situation → STABLE EQUILIBRIUM

# Why is everyone bothered about BEPS?

## THREE POSSIBLE SCENARIOS

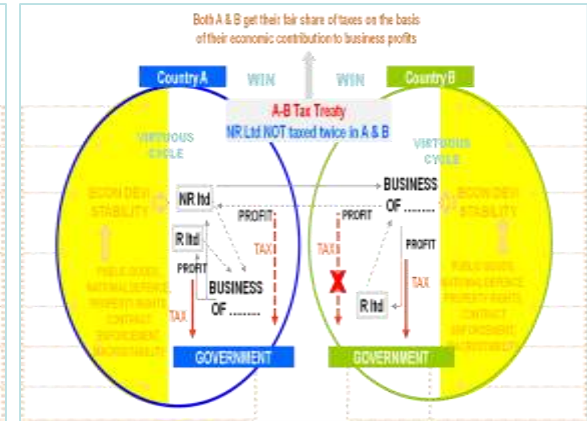
**NR pays TAX in B but not in A**



**NR pays NO TAX in either A or B**



**NR pays TAX in A but not in B**



**Economy suffers in A**  
**Interruption of Virtuous Cycle in A leads to economic slowdown & instability**  
**R in A faces higher tax burden & loses**  
**NR has tax advantage → Monopolizes Markets in A**

**Economy suffers in both A & B**  
**Interruption of Virtuous Cycle leads to economic slowdown & instability**  
**R faces higher tax burden & loses**  
**NR has tax advantage → Monopolizes Markets in both A & B**

**Economy suffers in B**  
**Interruption of Virtuous Cycle in B leads to economic slowdown & instability**  
**R in B faces higher tax burden & loses**  
**NR has tax advantage → Monopolizes Markets in B**

# BASE EROSION & PROFIT SHIFTING PROJECT

# Why is everyone bothered about BEPS?

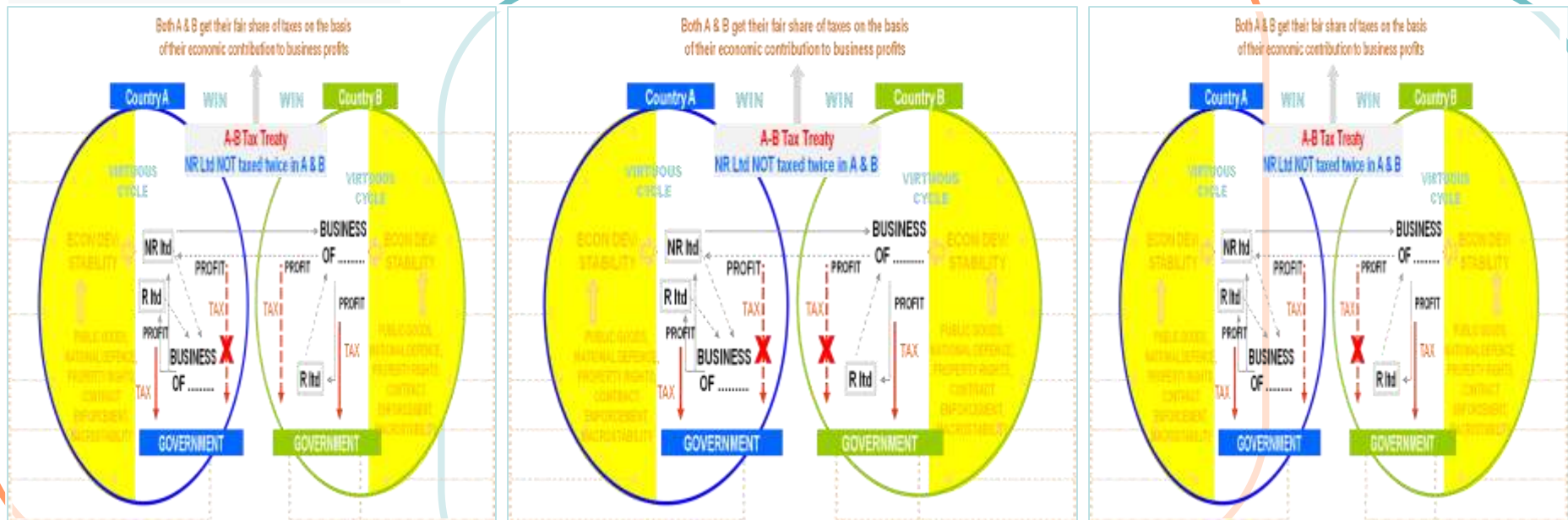
## THREE POSSIBLE SCENARIOS

## NR pays TAX in B but not in A

**NR pays NO TAX in either A or B**

## NR pays TAX in A but not in B

## DOMESTIC LAW MEASURES



## TAX TREATY MEASURES ACTIONS 1, 6, 7 & 14

## Action 15: MULTI LATERAL INSTRUMENT

# We wish to discuss

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# MULTI LATERAL CONVENTION

- **OBJECTIVES**

- To provide an opportunity for swiftly implementing tax treaty-related BEPS measures
- By signing a single Multi Lateral Convention

- **CHALLENGES**

- Widespread differences in tax treaties
- Widespread differences in preferences of countries
- Widespread differences in legal practices

- **SOLUTION**

- Sufficient Flexibility in treaties to be subjected to MLI
- Sufficient Flexibility in OPTING-IN & OPTING-OUT of provisions
- Relative inflexibility with MINIMUM STANDARDS

# MULTI LATERAL CONVENTION

<b>TITLE</b>	Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion And Profit Shifting	
<b>PREAMBLE</b>	“...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 those agreements for the indirect benefit of residents of third jurisdictions)”	
<b>PART I</b>	SCOPE & INTERPRETATION OF TERMS (ART 1-2)	
<b>PART II</b>	HYBRID MISMATCHES (ART 3-5)	
<b>PART III</b>	TREATY ABUSE (ART 6-11)	<b>Substantive Provisions</b>
<b>PART IV</b>	AVOIDANCE OF PE STATUS (ART 12-15)	
<b>PART V</b>	IMPROVING DISPUTE RESOLUTION (ART 16-17)	
<b>PART VI</b>	ARBITRATION (ART 18-26) - <b>optional</b>	
<b>PART VII</b>	FINAL PROVISIONS (ART 27-39)	

# MULTI LATERAL CONVENTION

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

The substantive measure recommended for adoption in a Final BEPS Action Report

### COMPATIBILITY CLAUSE

Explains how the substantive clause will be incorporated in the tax treaty → whether it will REPLACE the relevant provision or whether it will APPLY in the absence of a similar provision, overruling provisions incompatible to it

### RESERVATION

Only certain types of reservation that are provided in that article can be resorted to

### NOTIFICATION CLAUSE

for OPTING in a provision (where so provided)

for notifying preferred OPTION (where so provided)

for notifying similar provision that will be replaced/overruled

for notifying RESERVATION (if any)

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# PROCEDURE

## PROCEDURE : (Art 28)

The Convention opened for SIGNATURE on 31.12.2016  
*by STATES / specified JURISDICTIONS*

TWO STEP PROCESS : SIGNING → RATIFICATION

*(deposit of instrument of ratification)*

## RESERVATIONS (Art 28)

Only those EXPRESSLY permitted

UNLESS EXPLICITLY provided, they apply RECIPROCALLY  
[Art 28(3)-MLI] [Art. 21-Vienna Convention]

Different Reservations can be made for Specified Tax Jurisdictions

Reservations also TWO STEP PROCESS:

*MADE AT SIGNING → CONFIRM AT RATIFICATION*

*PROVISIONAL LIST AT SIGNING → FINAL AT RATIFICATION*

Reservation can be OMITTED or RELAXED later → It will APPLY  
the concerned provision on covered treaties

*(but New RESERVATIONS CANNOT be ADDED after ratification.  
Nor can it be REPLACED WITH A MORE STRINGENT  
RESERVATION)*

# PROCEDURE

## MLI PROVISIONS

### **NOTIFICATIONS** (Art 29)

List of “COVERED TAX AGREEMENTS” – to be covered by MLI

Can be EXTENDED later → MLI will apply to added CTAs

### **SUBSEQUENT AMENDMENTS** (Art 30)

Not PREJUDICED

Every Amending Protocol is technically a CTA, so a later amendment after CTA has been amended by MLI is not restricted in any way by MLI, unless the later Amending Protocol is added to the list of CTAs by both Contracting Parties

### **ENTRY INTO FORCE OF MLI for a CONTRACTING PARTY**(Art 34)

On RATIFICATION by Five PARTIES → **MLI enters into force**

w.e.f. 1<sup>st</sup> of month following 3 months after 5<sup>th</sup> ratifications for 1<sup>st</sup> FIVE parties ratifying the MLI

w.e.f. 1<sup>st</sup> of month following 3 months after ratification for Contracting Parties subsequently ratifying the MLI

# PROCEDURE

## MLI PROVISIONS

### ENTRY INTO EFFECT – APPLICATION of MLI to a TREATY (Art 35)

CTA (Covered Tax Agreement) amended by MLI for:

**TDS : w.e.f. April 1<sup>st</sup> following the CTA – for taxable events**

**Other than TDS: Taxable period beginning w.e.f. 1<sup>st</sup> April on / after the expiration of 6 calendar months after the ‘CTA EVENT’**

### CTA Event:

“latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” (Art 35)

In case of Reservation under Art 35 (7):

“30 Days after receipt of Instrument communicating Completion of Internal Procedure for application of MLI to a treaty”

### INDIA’S POSITION

India had opted for Reservation under **Art 35(7)** in its provisional notification. It has been withdrawn in its FINAL NOTIFICATIONS

India has opted for Reservation under **Art 35(2)** to replace ‘calendar year’ with ‘**taxable period**’

# PROCEDURE

## MLI PROVISIONS

### INTERPRETATION OF TERMS IN MLI

A few DEFINITIONS in ARTICLE 2

**“any term not defined herein shall ...have the meaning that it has at that time under the relevant CTA.”** [Art 2(2)]

So Definitions in CTA will apply

If a term is not defined in MLI/CTA → Article 3(2) of CTA will apply and accordingly the definition under Domestic Law will apply

### INTERPRETATION & IMPLEMENTATION (Art 32)

Issues relating to interpretation of CTA as amended by MLI → As per provisions of CTA → Definitions in CTA, Article 3 (2), MAP [Art 32(1)]

Issues relating to interpretation of MLI – by CONFERENCE OF PARTIES convened at a request supported by at least one third members (Art 31)

Conference of Parties to be called by DEPOSITORY – OECD : likely to be concerned with procedural & implementation issues



# PROCEDURE

## TIMELINE

ACTION 15: MLI

BEPS Final Reports

### MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

- **Opened** for Signing : 31<sup>st</sup> December, 2016
- **Signing** at OECD : **7<sup>th</sup> June, 2017 (INDIA signed)**
- **Ratification** : Austria, Isle of Man, Jersey, Poland, SLOVENIA (22<sup>nd</sup> March, 2018) – 3 MONTHS → **MLI enters into force** for Contracting Parties (those who have ratified it) **w.e.f. 1<sup>st</sup> July, 2018**
- For subsequent Ratifications (**INDIA RATIFIED on 6<sup>th</sup> June, 2019**) → **MLI enters into force** following expiry of 3 month period (**1<sup>st</sup> Oct, 2019**)
- **ENTRY into EFFECT of MLI on a CTA**: APPLICATION of MLI on CTA:  
for TDS : for Taxable event happening on/after the 1<sup>st</sup> day of the Calendar Yr / Taxable Period following the CTA EVENT  
other than TDS : for Taxable Period beginning on/ after expiry of 6 months following the CTA EVENT

**[23 CTAs ratified by both Contracting States by June, 2019: 1<sup>st</sup> April'20]**

# We wish to discuss

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# GLOBAL TRENDS

## TIMELINE

ACTION 15: MLI

BEPS Final Reports

### MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

- **Opened** for Signing : 31<sup>st</sup> December, 2016
- **SIGNATORIES** (till 30<sup>th</sup> Sept'19) : **89**  
*Another 6 have expressed intent of signing*
- **SIGNATORIES that have deposited Instrument of RATIFICATION** (till 30<sup>th</sup> Sept'19) : **29**
- **PARTIES** (as on 1<sup>st</sup> October'19) : **23**
- **ENTRY into EFFECT of MLI on a CTA** (w.e.f. 1<sup>st</sup> April, 2020):  
For TDS: All CTAs of 29 Signatories that have deposited Instruments of Ratification  
Other than TDS: All CTAs of 23 Parties

# IMPLICATIONS FOR INDIA

**TIMELINE**

**ACTION 15: MLI**

**BEPS Final Reports**



## MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

- **CTAs Notified by INDIA : 93**

Status	Count	MLI Impact
<b>MLI signed &amp; ratified by both Contracting States</b>	29	MLI has entered into force or will enter into force in coming months (unless a Reservation u/A 35(7) by other Contracting State)
<b>MLI signed but not ratified by other Contracting State</b>	29	MLI will become applicable only after the instrument of ratification is deposited by other Contracting Jurisdiction
<b>Other Contracting State has signed MLI but not notified treaty as CTA</b>	3	MLI will not impact treaty unless other Contracting State notifies it as CTA
<b>Other Contracting State yet to sign MLI</b>	32	MLI will become applicable only after it is signed and the instrument of ratification is deposited by other Contracting Jurisdiction

# IMPLICATIONS FOR INDIA

## MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

**OPENED**  
31<sup>ST</sup> DEC 2016 → **SIGNED (INDIA)**  
7<sup>TH</sup> JUNE 2017 → **RATIFIED (INDIA)**  
6<sup>TH</sup> JUNE 2019 → **ENTRY INTO FORCE**  
1<sup>ST</sup> OCT 2019 (INDIA)

### ENTRY INTO EFFECT of MLI on CTAs (INDIA)

**1<sup>ST</sup> APRIL  
2020**

Australia, Austria, Belgium, Finland, France, Georgia, Ireland, Israel, Japan, Lithuania, Luxemburg, Malta, Netherlands, New Zealand, Poland, Russia, Serbia, Singapore, Slovak Rep, Slovenia, Sweden, UAE, UK

(Ratification up to June 2019 → Entry into Force 1<sup>st</sup> Oct, 19)

**TDS  
1<sup>ST</sup> APRIL  
2020**

Norway (Ratification July'19 → Entry into Force 1<sup>st</sup> Nov, 19)

**Other than  
TDS  
1<sup>ST</sup> APRIL  
2021**

Ukraine, Canada, Switzerland  
(Ratification August'19 → Entry into Force 1<sup>st</sup> Dec, 19)

Iceland, Denmark  
(Ratification September'19 → Entry into Force 1<sup>st</sup> January, 2020)

Option for Contracting States to APPLY MLI on/after expiry of a period  
**LESS THAN SIX MONTHS**

**TIMELINE**

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**Art 3  
TRANSPARENT  
ENTITIES**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 3 – Transparent Entities

## SUBSTANTIAL PROVISIONS

### **BEPS MEASURE** (Para 1-3)

Income derived by **or through** FISCALLY TRANSPARENT ENTITY accorded treaty benefit, but ONLY to the EXTENT it is treated/taxed as income of resident (Para 1)

Income exemption in resident country NOT to be given for income taxed on basis of residence in other State (Para 2)

UNLIMITED right to tax own residents (Para 3)

### **COMPATIBILITY CLAUSE** (Para 4)

Para 1 ( $\pm$  3) to APPLY in absence/ in place of similar prov.

### **RESERVATION (INDIA)** (Para 5)

**Entirety of this article NOT to APPLY**

### **NOTIFICATIONS CLAUSE** (Para 6)

No OPT-IN

Only RESERVATIONS

# Art 3 – Transparent Entities

## BACKGROUND

### Original intent

To EXTEND treaty benefits to FISCALLY TRANSPARENT ENTITIES even if they are not “LIABLE to tax” as such

### BEPS Measure

2. For the purposes of this Convention, **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 State** shall be **considered to be income of a resident** of a Contracting State but **only to the extent** that the income is **treated**, for purposes of taxation by that State, **as the income of a resident** of that State. [Art 1(2)-OECD'17]

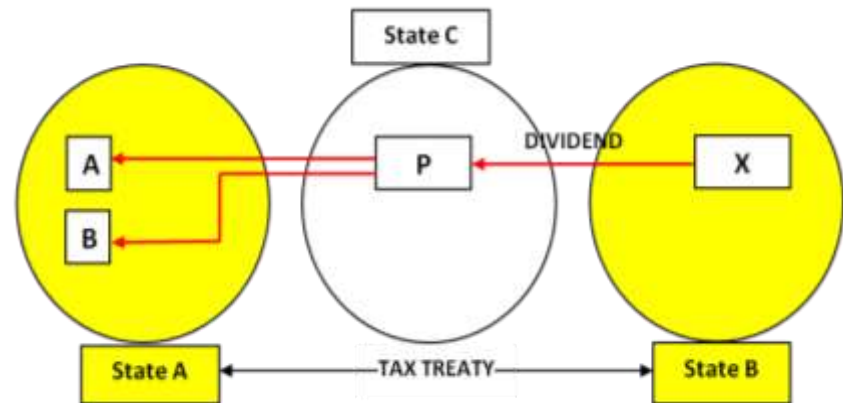
### Commentary in OECD-MTC'17 (Paragraph 7)

“..it does not matter where the entity or arrangement is established .... the **paragraph applies to an entity established in a third State** to the extent that, under the domestic tax law of one of the Contracting States, the **entity is treated as wholly or partly fiscally transparent** and income of that entity is attributed to a resident of that State”



# Art 3 – Transparent Entities

## BACKGROUND



## Analysis

Provision in Article 1 – PERSONS COVERED

Can it apply to an entity in a third State, even if it is NOT treated as FISCALLY TRANSPARENT under the laws of that State ?!

Does it extend the scope of B/L treaty to person not resident in either State if it is treated FISCALLY TRANSPARENT under the laws of either Contracting State ?!

## India's Position on Para 7 of Art 1 (2) of OECD-MTC'17

*“India does not agree with the view expressed in paragraph 7 of the Commentary on Article 1 that the term “income derived by or through an entity or arrangement” includes income derived by or through an entity that may not be a resident of either of the Contracting States. India considers that this term includes only such income that is derived by or through entities that are resident of one or both Contracting States.”*

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**Art 4  
DUAL  
RESIDENT  
ENTITIES**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 4 – Dual Resident Entities

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

Residence of dual resident **entities** to be mutually determined by CAs → benefit only IF an Agreement (Para 1)

AGREED DISCRETIONARY RELIEF - Not contestable in Courts

### COMPATIBILITY CLAUSE (Para 2)

Para 1 to APPLY in absence/ in place of similar prov.

### RESERVATION (INDIA) (Para 3)

No Reservations

### NOTIFICATIONS CLAUSE (Para 4)

No OPT-IN

Only RESERVATIONS

# Art 4 – Dual Resident Entities

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 4 replaces existing provision	<b>(20)</b> <i>[Canada, Ireland, Netherlands, New Zealand, Norway, Russia, South Africa, UK....]</i>	<b>(34)</b>
Para 1 of Article 4 applies & supersedes CTA	None	<i>[Austria, Belgium,, Cyprus, Denmark, Finland, France, Italy, Korea, Luxembourg, Malaysia, Portugal, Singapore, Spain, Sweden, Switzerland, UAE ....]</i>
Para 1 of Article 4 (substituted) replaces existing provision	<b>(4)</b> <i>[Indonesia, Australia, Fiji, Japan]</i>	
Para 1 of Article 4 (substituted) applies & supersedes CTA	None	

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**Art 5  
ELIMINATION OF  
DOUBLE TAX**

- Overall Impact of MLI
- What's Next?
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# Art 5 –Methods for Elimination of Double Taxation

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

3 OPTIONS: Non-Reciprocal Application on own residents  
(Para 1)

Op-A: Ordinary Credit method to apply in place of Income Exemption method where income gets any treaty benefit in the State where it arises. (Para 2)

Op-B: Ordinary Credit method to apply in place of Income Exemption method where DIVIDEND is a deductible tax expense in the State where it arises (Para 4)

Op-C: Ordinary Credit method (Para 6) - (INDIA)

### COMPATIBILITY CLAUSE (Para 3/5/7)

Op-A/B to APPLY; Op-C to REPLACE similar provision

### RESERVATION (INDIA)

NO RESERVATION

### NOTIFICATIONS CLAUSE

OPTION [Opt either or None]

CTAs (treaties) & Relevant Articles (Para 10)

# Art 5 –Methods for Elimination of Double Taxation

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Existing prov for elim of DT in India replaced by Option C	(2) <i>[Egypt, Slovak Republic]</i>	(53)
Option A applies for Elim of DT by other Contr Juris	(2) <i>[Netherlands, Switzerland]</i>	
Option B applies for Elim of DT by other Contr Juris	None	
Option B applies for Elim of DT by other Contr Juris	(2) <i>[Austria, Slovak Republic]</i>	

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**Art 6  
PURPOSE OF  
CTA**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments



# Art 6 –Purpose of a Covered Agreement

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

A Covered Tax Agreement shall include this text: (Para 1)

*“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**),”.*

Can also add (optional) (Para 3)

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

### COMPATIBILITY CLAUSE (Para 2)

IN PLACE or IN ABSENCE of similar provision

### RESERVATION (INDIA) (Para 8)

No Reservations

### NOTIFICATIONS CLAUSE

OPT-IN for Para 3, RESERVATION

TEXT to be REPLACED if any

# Art 6 –Purpose of a Covered Agreement

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Text in Para 1 of Article 6 included in Preamble	ALL (58)	NONE

*In Azadi Bachao Andolan – SC noted purpose as avoidance of double tax & fiscal relief  
Took a liberal interpretation in the absence of any explicit purpose for preventing tax avoidance & treaty shopping*

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**Art 7  
PREV OF  
TREATY ABUSE**

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# Art 7 –Prevention of Treaty Abuse

## BACKGROUND

### ACTION 6 REPORT

New PROVISION– ENTITLEMENT OF BENEFITS

ARTICLE 29 in OECD-MTC'17 consisting of  
Principle Purpose Test + Limitation of Benefit

(PPT – PARA 9)

(PPT – PARA 1-7)

DETAILED

SIMPLIFIED

### MINIMUM STANDARD

(Action 6 Report: Exec. Summary)

PPT or

PPT + LOB (detailed/simplified)

LOB (detailed) + Anti-Conduit Rules

Most countries in favor of either PPT or LOB+PPT

Only few countries favor PPT + LOB

PPT

LOB +

PPT

ACR

### INDIA

Preference for PPT + LOB

# Art 7 –Prevention of Treaty Abuse

## BACKGROUND

### INTERACTION OF LOB & PPT

Both have INDEPENDENT APPLICATION

PPT

LOB +

PPT

ACR

*“171. Paragraph 9 supplements and does not restrict in any way the scope or application of the provisions of paragraphs 1 to 7 (the limitation-on-benefits rule) ... the guidance provided in the Commentary on paragraph 9 should not be used to interpret paragraphs 1 to 8 and vice-versa.”*

*“172. ...the fact that a person is entitled to benefits under paragraphs 1 to 7 does not mean that these benefits cannot be denied under paragraph 9. Paragraphs 1 to 7 are rules that focus primarily on the legal nature, ownership in, and general activities of, residents of a Contracting State. ... these rules do not imply that a transaction or arrangement entered into by such a resident cannot constitute an improper use of a treaty provision.”*

(OECD COMMENTARY ON ARTICLE 29, based on ACTION 6 REPORT)

# Art 7 –Prevention of Treaty Abuse

## DESIGN

### PRINCIPLE PURPOSE TEST

Default provision – mandatory unless a State OPTS for “detailed LOB with Anti-conduit Rules” to fulfill the MINIMUM STANDARD

Option to include ‘DISCRETIONARY BENEFIT’ in PPT

### SIMPLIFIED LIMITATION OF BENEFIT RULES

OPTIONAL

### FLEXIBILITY

OPTIONS for

Non-Reciprocal Application of LOB

INCLUSION of Simplified LOB where Other Contracting State OPTS for it

# Art 7 –Prevention of Treaty Abuse

## PRINCIPAL PURPOSE TEST

### BEPS MEASURE

*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.* (Para 1)

DISCRETIONARY RELIEF BY CA (Para 4 - Optional)

### COMPATIBILITY CLAUSE (Para 2)

IN PLACE or IN ABSENCE of similar provision

### RESERVATION (INDIA) (Para 15)

No Reservations

### NOTIFICATIONS CLAUSE [Para 17(a),(b)]

Provisions to be REPLACED→ REPLACED only where both parties Notify; other cases PPT APPLIES & SUPERCEDES.

OPT-IN for Para 4

# Art 7 –Prevention of Treaty Abuse

## LIMITATION OF BENEFIT RULES

### BEPS MEASURE

Only QUALIFIED RESIDENTS entitled to benefits (Para 8)

Individuals, Govt, Listed Comp, NGOs, Pension Funds qualify (Para 9)

Entities with majority ownership with RESIDENTS [Para 9 (e)]

Active conduct of Business – Substantial – Group activities (Para 10)

Entity OWNED 75% by EQUIVALENT BENEFICIARIES (Para 11)

*Entitled to same tax as provided under treaty* [Para 13(c)]

DISCRETIONARY RELIEF BY CA (Para 12)

### COMPATIBILITY CLAUSES

OPTIONAL (Para 6)

FLEXIBLE – Inclusion if other Contracting State Prefers [Para 7(a)]

Non Reciprocal Application [Para 7(b)]

IN PLACE or IN ABSENCE of similar provision (Para 14)

### RESERVATION (INDIA-PROVISIONAL) (Para 15, 16)

No Reservations

### NOTIFICATIONS CLAUSE [Para 17(c)]

Provisions to be REPLACED



# Art 7 –Prevention of Treaty Abuse

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 7 (PPT) replaces existing provision	(19)	NONE
Para 1 of Article 7 (PPT) applies & supersedes CTA	(39)	
Para 8-13 of Article 7 (S.LOB) replace existing provision	(3) <i>[Armenia, Uruguay, Iceland]</i>	(46)
Para 8-13 of Article 7 (S.LOB) applies & supersedes CTA	(8) <i>[Bulgaria, Colombia, Denmark, Indonesia, Kazakhstan, Norway, Russia, Slovak Rep]</i>	
Para 8-13 of Article 7 (S.LOB) applies & supersedes CTA <i>[asymmetrical application by India]</i>	(1) <i>[Greece]</i>	

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 8  
DIV TRANSFER  
TRANSACTIONS**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 8 – Dividend Transfer Transactions

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

Concessional Tax Rate of Inter-Corporate Dividend subject to Minimal Holding *“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”* → new concept of **“Minimal Holding PERIOD”**  
(Para 1)

### COMPATIBILITY CLAUSE (Para 2)

Minimal Holding PERIOD to APPLY in PLACE/ ABSENCE

### RESERVATION (INDIA-PROVISIONAL) (Para 3)

No Reservations

### NOTIFICATIONS CLAUSE (Para 4)

Provisions to which APPLICABLE - Applies only where both parties NOTIFY  
RESERVATIONS

# Art 8 – Dividend Transfer Transactions

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 8 (Dividend Transfer Transactions) applies to relevant provision	(4) <i>[Canada, Serbia, Slovak Republic, Slovenia]</i>	(54)

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 9**  
**CG from Shares**  
**deriving value from**  
**IMM PROP**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 9 -

## Capital Gains from Shares deriving Value from Immovable Property

### SUBSTANTIAL PROVISIONS

#### BEPS MEASURE

Provision for SOURCE taxation of CG from Shares/Interests deriving value from IMMOVABLE PROPERTY *“shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and...shall apply to shares or comparable interests, such as interests in a partnership or trust..”* (Para 1) OR

Replace it with MODIFIED ART13(4) (Para 4)

#### COMPATIBILITY CLAUSE

Para 1 to APPLY in PLACE/ ABSENCE (Para 2)

Para 4 OPT-IN by both Contr. States REPLACES (Para 3,5)

#### RESERVATION (INDIA-PROVISIONAL) (Para 3)

No Reservations

#### NOTIFICATIONS CLAUSE

Notify Provisions for APPLICATION of Para 1 (Para 4)

OPT-IN for Para 4 –when by both parties, Para 1 shall not apply (Para 4)

# Capital Gains from Shares deriving Value from Immovable Property

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 4 of Article 9 (CG) replaces existing provision	<b>(20)</b> <i>[Canada, Ireland, Israel, Italy, New Zealand, Poland, Portugal, Saudi Arabia, Spain.....]</i>	<b>(27)</b>  <i>[Cyprus, Denmark, Finland, Korea, Kuwait, Luxembourg, Malaysia, Norway, Qatar, Singapore, South Africa, Sweden, Switzerland, UAE, UK.....]</i>
Para 4 of Art 9 (CG) applies & supersedes CTA	<b>(6)</b> <i>[Egypt, France, <b>Japan</b>, Malta, <b>Russia</b>, Greece]</i>	
Para 1 of Art 9 (CG) applies on existing provision	<b>(4)</b> <i>[Australia, Fiji, Mexico, Netherlands]</i>	
Subpara (b) of para (1) of Article 9 applies on existing provision	<b>(1)</b> <i>[Belgium]</i>	
Subpara (a) of para (1) of Article 9 applies on existing provision	None	

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 10  
PE in THIRD  
JURISDICTION**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments



# Art 10 – ANTI-ABUSE for PE in III Jurisdiction

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

Where Income attributable to PE in III Jurisdiction & EXEMPTED in country of residence, 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”* (Para 1)

Not applicable where income derived by *“active conduct of a business”* (Para 2)

DISCRETIONARY BEENFIT clause (Para 3)

### COMPATIBILITY CLAUSE (Para 4)

To APPLY in PLACE/ ABSENCE of similar provision

### RESERVATION (INDIA-PROVISIONAL) (Para 5)

No Reservations

### NOTIFICATIONS CLAUSE (Para 4)

RESERVATIONS, No OPT-IN

# Art 10 – ANTI-ABUSE for PE in III Jurisdiction

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1-3 of Article 10 (III State PE Rule) replaces existing provision	None	
Para 1-3 of Article 10 (III State PE Rule) applies & supersedes CTA	<b>(17)</b> <i>[Albania, Armenia, Austria, Fiji, Israel, Japan, Kazakhstan, Mexico, Netherlands, NZ, Romania, Russia, Slovak Rep, Slovenia, Spain, Ukraine, Uruguay]</i>	<b>(41)</b>

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 11**  
**Right to TAX**  
**own RESIDENTS**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 11 – Unrestricted RIGHT to tax own RESIDENTS

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

Treaty “*shall not affect the taxation by a Contracting Jurisdiction of its residents, except...*”

- **Correlative/Corresponding Adjustment** [Art 7(3)\*/ 9(2)],
- **Govt. Servant** (Art.19),
- **Students/teachers\*\*/researchers \*\*** (Art. 20),
- **Relief from Double Tax** (Art. 23),
- **Non-discrimination** (Art. 24),
- **MAP** (Art. 25),
- **Pensions under Social Security Legislation** (Art. 18A)\*\* *or arising in other State* (Art. 18B)\*\*,
- **Expressly restricted right to tax** (Art. 28\*/29\*\*) (Para 1)

### COMPATIBILITY CLAUSE (Para 2)

To APPLY in PLACE/ ABSENCE of similar provision

### RESERVATION (INDIA-PROVISIONAL) (Para 3)

No Reservations

### NOTIFICATIONS CLAUSE (Para 4)

RESERVATIONS, No OPT-IN

\* Only in OECD MTC

\*\* Only in UN MTC

# Art 11 – Unrestricted RIGHT to tax own RESIDENTS

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
<b>Article 11 (Right to Tax Residents) applies to CTA</b>	<b>(16)</b>  <i>[Armenia, Australia, Colombia, Fiji, Indonesia, Mexico, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Spain, Ukraine, UK]</i>	<b>(42)</b>

*Can strengthen certain Domestic Laws dealing with tax avoidance, e.g. CFC rules, TP, SAAR*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 12**  
**Dependent Agent PE**  
[Artificial Avoidance of PE Status]

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 12 – DEPENDENT AGENT PE

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

Extend DAPE to agent who *“habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise”*

Extend CONTRACTS to include those *“(a) in the name of the enterprise; (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”*  
(Para 1)

Independent Agent Exclusion not to apply where the agent *“acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related”*  
(Para 2)

### COMPATIBILITY CLAUSE

Para 1 to APPLY in PLACE of similar provision, *“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”*

*Thus Only concluding contracts condition in the tax treaty is modified. Other conditions leading to DAPE such as maintenance of stock of goods from which delivery is made\*\* that apply separately remain unaffected.*  
[Para 3(a)]

**\*\*** Only in UN MTC

# Art 12 – DEPENDENT AGENT PE

## SUBSTANTIAL PROVISIONS

### **COMPATIBILITY CLAUSE** -contd.

Para 2 to apply in PLACE of provision dealing with Independent Agent Exclusion [ Para 6 in OECD-MTC, Para 7 in UN-MTC]

[Para 3(b)]

### **RESERVATION (INDIA-PROVISIONAL)** (Para 4)

No Reservations

### **NOTIFICATIONS CLAUSE** (Para 5,6)

RESERVATIONS, No OPT-IN

Provisions on which APPLICABLE to be NOTIFIED

APPLIES ONLY where both Contr. States have NOTIFIED the provisions



# Art 12 – DEPENDENT AGENT PE

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
<b>Para 1 &amp; 2 of Article 12 (Dependent Agent PE) apply (replace / Supersede)</b>	<b>(26)</b>  <i>[Belgium, Colombia, Egypt, Fiji, France, Indonesia, Israel, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, New Zealand, Norway, Romania, Russia, Saudi Arabia, Serbia, Slovak Republic, Slovenia, Spain, Turkey, Ukraine, Uruguay]</i>	<b>(32)</b>  <i>[Australia, Austria, , Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Korea, Kuwait, Latvia, Luxembourg, Malta, Morocco, Netherlands, Qatar, Poland, Portugal, Singapore, South Africa, Sweden, Switzerland, UAE, UK]</i>

*Is Commissionaire relevant under Indian Contract Act, 1872 ?*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 12**  
**Specific Activity**  
**Exemption**

[Artificial Avoidance of PE Status]

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 12 – SPECIFIC ACTIVITY EXEMPTION

## BACKGROUND

### Commentary on Art 5(4) [prior to BEPS] – Para 21-27

*“...the provisions of paragraph 4 are designed to prevent an enterprise of one State from being taxed in the other State, if it carries on in that other State, activities of a purely preparatory or auxiliary character.”*  
....Para 21

*“It is often difficult to distinguish between activities which have a preparatory or auxiliary character and those which have not. The decisive criterion is whether or not the activity of the fixed place of business in itself forms an essential and significant part of the activity of the enterprise as a whole. Each individual case will have to be examined on its own merits.”*  
....Para 24

*“.....paragraph 4 is designed to provide for exceptions to the general definition of paragraph 1 in respect of fixed places of business which are engaged in activities having a preparatory or auxiliary character.”*  
....Para 27

Generally interpreted as exempting preparatory & auxiliary activities

# Art 12 – SPECIFIC ACTIVITY EXEMPTION

## BACKGROUND

### ACTION 7 REPORT : Paragraphs 4 & 11 to 13 (Page 28)

Noted that some delegates held a view that activities listed in clauses (a) to (d) in Art. 5 (4) were exempt per se

This view was taken up for examination by WP-1

**Agreed to modify Art. 5(4) to explicitly provide that they will be exempt only if they are of a “preparatory or auxiliary” character.**

Noted the **ALTERNATE view** that **IF ANTI-FRAGMENTATION RULE is included, then this modification NOT REQUIRED. Such countries may adapt an alternate version** (page 38 of Action 7 report/ para 78 of Commentary in OECD-MTC’18)

Also noted: *“This report includes the changes that will be made to Article 5 of the OECD Model Tax Convention and the Commentary thereon as a result of the work on Action 7 of the BEPS Action Plan. It should be noted that **these changes are prospective only and, as such, do not affect the interpretation of the former provisions of the OECD Model Tax Convention and of treaties in which these provisions are included**, in particular as regards the interpretation of existing paragraphs 4 and 5 of Article 5.”* (para 4 of Action 7 report)

# Art 12 – SPECIFIC ACTIVITY EXEMPTION

## BACKGROUND

### ACTION 7 REPORT

RECOMMENDED MODIFICATION IN ART 5(4) to make it explicitly clear that all activities LISTED in para 5(4) will be EXEMPT only if they are PREPARATORY/AUXILIARY

*4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:*

- a)*
- b)*
- c)*
- d)*

*e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;*

*f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), ~~provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character,~~*

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

# Art 12 – SPECIFIC ACTIVITY EXEMPTION

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

OPTIONS A / B / neither (Para 1)

A: Modified Prov recommended by Action 7 (Para 2)

B: Alternate Prov in Commentary (Para 3)

ANTI-FRAGMENTATION Rule: Art 5 (4) NOT APPLICABLE for activities that are part of a Cohesive business carried on through any Group entity or its PE in source State (Para 4)

### COMPATIBILITY CLAUSE (Para 5)

OPTION A/B To APPLY in PLACE of similar provision

Para 4 to APPLY on Art. 5 (4)

### RESERVATION (INDIA-PROVISIONAL) (Para 6)

No Reservations

### NOTIFICATIONS CLAUSE (Para 7,8)

OPT IN - OPTIONS A/B/none, Relevant provisions → An options applies when opted for by both Contr. States

RESERVATIONS

Anti FR Rule applies on prov. notified u/p 7/8 by both Contr. States.

# Art 12 – SPECIFIC ACTIVITY EXEMPTION

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 2 & 3 of Article 13 (Option A) replace existing provision & Para 4 (Anti Fragmentation Rule) applies to it	(28) [Armenia, Australia, Colombia, Croatia, Egypt, Fiji, Indonesia, Israel, Italy, Japan, Kazakhstan, Kuwait, Malaysia, Mexico, Netherlands, New Zealand, Norway, Romania, Russia, Saudi Arabia, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Turkey, Ukraine, Uruguay]	(23) [Albania, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Greece, Hungary, Iceland, Korea, Latvia, Luxembourg, Malta, Morocco, Poland, Qatar, Singapore, Sweden, Switzerland, UAE]
Only para 2 & 3 of Article 13 (Option A) replace existing provision	(1) [Austria]	
Only Para 4 (Anti Fragmentation Rule) applies to existing provision	(6) [Belgium, France, Ireland, Lithuania, Portugal, UK]	

AFR also applies on PE of domestic enterprise → Indian Subsidiary limits Specific Activity Exemption for Closely Related Entities

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 14  
SPLITTING of  
CONTRACTS**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments



# Art 14 – Splitting up of Contracts

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

For determining whether stipulated period for constituting PE has been exceeded – activities >30days connected to the same Building/ Construction/ Installation project carried by CLOSELY RELATED ENTERPRISES shall be added.

(Para 1)

### COMPATIBILITY CLAUSE (Para 2)

To APPLY in PLACE/ in ABSENCE of similar provision

### RESERVATION (INDIA-PROVISIONAL) (Para 3)

No Reservations

### NOTIFICATIONS CLAUSE (Para 7,8)

RESERVATIONS

Relevant Provisions

# Art 14 – Splitting up of Contracts

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 14 (Rule for Splitting up of Contracts) applies to CTA	<b>(19)</b> <i>[Armenia, Australia, Colombia, Egypt, Fiji, Indonesia, Ireland, Israel, Kazakhstan, Kuwait, Netherlands, New Zealand, Romania, Russia, Saudi Arabia, Serbia, Slovak Republic, Ukraine, Uruguay]</i>	<b>(42)</b> <i>[Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Netherlands, Qatar, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Sweden, Switzerland, Turkey, UAE, Uruguay]</i>
Para 1 of Article 14 applies to CTA except on Exploration	<b>(2)</b> <i>[Lithuania, Norway]</i>	

*Splitting up of Contracts Rule is NOT part of MTCs as yet !*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 15  
CLOSELY  
RELATED**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 15 – Person Closely Related to an Enterprise

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

**Definition** for purpose of Art 12, 13 and 14 :

***CLOSELY RELATED if***

***“one has control of the other or both are under the control of the same persons or enterprises”***

***“if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other”***

***“if another person possesses directly or indirectly more than 50 per cent of the beneficial interest in the person and the enterprise”***

(Para 1)

**RESERVATION (INDIA-PROVISIONAL)** (Para 2)

No Reservations

**NOTIFICATIONS CLAUSE**

Reservations

# Art 15 – Person Closely Related to an Enterprise

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 15 (Closely Related Person) applies in place of existing provision	(35)	(23)

*Consequential Change from Art 12, 13 & 14*  
*Indicates CTAs where definition of PE will be impacted*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA
- **Individual Provision of MLI : Articles 3 -17**
  - ☐ Substantial Provision
  - ☐ Background (where Relevant)
  - ☐ Position of India & Treaty Partners
  - ☐ Implications for Indian Treaties
- Overall Impact of MLI
- What's Next?
- Discussion & Comments

**Art 16  
MAP**

# Art 16 – Mutual Agreement Procedure

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

- MAP request may be presented to CA of **EITHER STATE** (Para 1.1)
- Within 3 years (min time to be available) (Para 1.2)
- CAs shall endeavour to resolve such cases (Para 2.1)
- Agreement implementation notwithstanding time limits (Para 2.2)
- CAs shall endeavour to resolve interpretational issues (Para 3.1)
- CAs MAY consult for cases not provided in treaty (Para 3.2)

### COMPATIBILITY CLAUSE (Para 4)

- 1.1: In PLACE/ in ABSENCE of similar provision
- 1.2: In PLACE of provision with <3 years/ in ABSENCE
- 1.3/1.4/.1.5/1.6: In ABSENCE of such provision

### RESERVATION (INDIA-PROVISIONAL) (Para 5)

**Reservation on Para 1.1 – Min Std by Consultation Alternative**

### NOTIFICATIONS CLAUSE (Para 6)

Reservations, Relevant provisions, Treaties without relevant provisions

CA = Competent Authority under the tax treaty

# Art 16 – Mutual Agreement Procedure

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
1 <sup>st</sup> sentence of Para 1 of Article 16 (MAP) applies in place or absence of existing provision	<b>NONE</b>	<b>(49)</b>
2 <sup>nd</sup> sent of Para 1 of Article 16 (MAP) applies in place or absence of existing provision	<b>(5)</b> <i>[Belgium, Canada, Greece, UAE, UK]</i>	
1 <sup>st</sup> sent of Para 2 of Article 16 (MAP) applies in its absence	<b>(4)</b> <i>[Egypt, Greece, Italy, Mexico]</i>	
2 <sup>nd</sup> sent of Para 2 of Article 16 (MAP) applies in its absence	<b>(5)</b> <i>[Egypt, Greece, Italy, Mexico, UK]</i>	
1 <sup>st</sup> sent of Para 3 of Article 16 (MAP) applies in its absence	<b>(2)</b> <i>[Australia, Greece]</i>	
2 <sup>nd</sup> sent of Para 3 of Article 16 (MAP) applies in its absence	<b>(4)</b> <i>[Australia, Belgium, Greece, UK]</i>	



# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA

- **Individual Provision of MLI : Articles 3 -17**

- ☐ Substantial Provision
- ☐ Background (where Relevant)
- ☐ Position of India & Treaty Partners
- ☐ Implications for Indian Treaties

**Art 17  
CORRESPONDING  
ADJUSTMENT**

- Overall Impact of MLI
- What's Next?
- Discussion & Comments

# Art 17 – Corresponding Adjustment

## SUBSTANTIAL PROVISIONS

### BEPS MEASURE

In case of Adjustment made by ALP → *“other Contracting Jurisdiction shall make an appropriate adjustment to the amount of the tax charged therein on those profits”* (Para 1)

### COMPATIBILITY CLAUSE (Para 2)

To APPLY in PLACE/ in ABSENCE of similar provision

### RESERVATION (INDIA-PROVISIONAL) (Para 3)

No Reservations

### NOTIFICATIONS CLAUSE (Para 4)

#### RESERVATIONS

Relevant Provisions → Prov. notified by BOTH Contr. States will be REPLACED; Otherwise provision in treaty will SUPERCEDED

# Art 17 – Corresponding Adjustment

## IMPLICATIONS

OUTCOME	CTAs IMPACTED	CTAs Not Impacted
Para 1 of Article 17 (Corresponding Adjustment) applies to CTA	<b>(16)</b> <i>[Belgium, Bulgaria, France, Greece, Italy, Japan, Lithuania, Malaysia, Russia, Slovak Republic, Sweden, Switzerland, UAE]</i>	<b>(42)</b>

*India has also withdrawn its position on Art 9(2) in 2017 updates of MTCs*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA
- Individual Provision of MLI : Articles 3 -17
  - ☐ Substantial Provision
  - ☐ Background (where Relevant)
  - ☐ Position of India & Treaty Partners
  - ☐ Implications for Indian Treaties
- **Overall Impact of MLI**
- **What's Next?**
- **Discussion & Comments**

# Overall Impact of MLI

## WORK IN PROGRESS

MLI is still a work in progress

Several Developing Countries YET to Sign

Out of 93 treaties notified by India as CTAs, other Contracting Jurisd have signed in 58

In 29 CTAs, other Contracting Jurisdictions have deposited Instrument of Ratification

MLI has entered into force on 1<sup>st</sup> October for 23 CTAs

## SCOPE of IMPACT

Only certain Provisions to be effected

Article 6 (Preamble) & PPT apply UNIVERSALLY to all (58) CTAs

Article 10 (Div transfer) has the least application (4) CTAs, followed by Article 5 (Elim of DT) in (5) CTAs

New Rules – Anti Fragmentation Rule (34), Splitting up of Contract Rule (21) & PE in III Jurisdiction Rule (17) introduced in significant CTAs

Overall Impact on Indian Treaties likely to be Highly Significant in respect of addressing BEPS

*Which Article of MLI do you think may have Greatest Impact?*

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA
- Individual Provision of MLI : Articles 3 -17
  - ☐ Substantial Provision
  - ☐ Background (where Relevant)
  - ☐ Position of India & Treaty Partners
  - ☐ Implications for Indian Treaties
- Overall Impact of MLI
- **What's Next?**
- Discussion & Comments

# What's NEXT

## PROGRESS IN MLI

Greater Participation of Developing Countries in future  
Treaties with Mauritius, China & Germany?  
The impact will begin from 1<sup>st</sup> April, 2020  
Practical Impact will gradually become visible  
Will it DETER venturing into GREY Areas?  
Peer Review of Minimum Standards in Action 6?

## SYNTHESIZED TEXTS

## UNFINISHED AGENDA

Digital Economy – Ongoing Work in TFDE → SEP / DST?  
Characterization Issues  
Indirect Transfer of Equity Shares / Movable Property?

## LONG TERM IMPACT

Can it lead to greater Tax Harmonization?  
Broader Participation in Rule Making?

# We wish to discuss

- Why is addressing BEPS Necessary?
- MLI: Purpose & Organization
- MLI Implementation: Procedure, Timeline & Developments
- GLOBAL TRENDS & Implications for INDIA
- Individual Provision of MLI : Articles 3 -17
  - ☐ Substantial Provision
  - ☐ Background (where Relevant)
  - ☐ Position of India & Treaty Partners
  - ☐ Implications for Indian Treaties
- Overall Impact of MLI
- What's Next?
- **Discussion & Comments**



**THANK YOU**