COMMENTS ON MULTILATERAL INSTRUMENT TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

MONDAY, 17 MAY 2021

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PROLOGUE:

The Multilateral Instrument (MLI) is one of the OECDs' Base Erosion and Profit Shifting ("BEPS") Project that was announced in 2012. The main purpose of the BEPS Project was to reduce BEPS, which OECD defines as "tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations". The BEPS Project seeks to identify and eliminate the areas and instances of what is often referred to as "double non-taxation" – circumstances in which income is connected with two or potentially more, jurisdictions, neither of which imposes a tax on it.

OECD, Addressing Base Erosion and Profit Shifting, OECD PUBLISHING (2013)

The Federal Government has issued SRO 405(I)/2021 dated 01 April 2021 whereby it was informed that Pakistan had signed the Multilateral Convention to Implement Tax Treaty Related Measures to prevent base erosion and profit sharing (the MLI) on 7th June 2017, and had subsequently submitted a list of reservations and notifications and ratified the MLI by depositing an instrument of ratification on 18th December 2020. Now the above Convention is in force on 1st April 2021 and shall have effect in each of the contracting jurisdictions with respect to Covered Tax Agreements.

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Monday, 17 May, 2021

BRIEF COMMENTS ON MULTILATERAL INSTRUMENT TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

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

A. BACKGROUND

The Multilateral Instrument (MLI) is one of the OECDs' Base Erosion and Profit Shifting ("BEPS") Project that was announced in 2012. The main purpose of the BEPS Project was to reduce BEPS, which OECD defines as 'tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations'. The BEPS Project seeks to identify and eliminate the areas and instances of what is often referred to as "double non-taxation" – circumstances in which income is connected with two or potentially more jurisdictions, neither of which imposes a tax on it.
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A.1 Covered Tax agreements

The MLI try to achieve the above objective by modifying existing bilateral tax treaties between various tax jurisdictions. Where two jurisdictions that have signed a tax treaty, have also signed the MLI, both indicate that they intend that the MLI shall apply to the treaty as well, thus making that treaty a '**covered tax agreement**'. Covered tax agreements are then subject to at least some of the provisions of MLI that intend to restrict BEPS which provisions are adopted by each of the jurisdictions. It is important to note that MLI only signals a global desire to challenge BEPS in a more cooperative way and ultimately, it does not require to commit to eliminating double non-taxation scenarios, nor does it provide a mandatory enforcement mechanism for ensuring that double non-taxation is eliminated. A very few articles of MLI are mandatory, and it is worth mentioning that, considering the realities, many of the signees have not even adopted some of the most important provisions of MLI. MLIs, therefore, rely more on voluntary actions of the nations involved in it to eliminate double non-taxation scenarios.

Example of BEPS

The OECD provides one particular mode of BEPS to illustrate. Suppose a business is organized as a corporation in Country A. It may have a wholly-owned subsidiary in Country B. The corporation in Country A owns intellectual property that it wants to license to the corporation in Country B. However, both Country A and Country B have relatively high marginal tax rates on the income that would be generated to the parent from licensing this intellectual property. Accordingly, the business incorporates a third entity in Country C, which has very low taxes on this type of income. This third entity then holds the IP, the income from which may largely be taxable in Country C instead of Country A and B, even though the parties have no other presence in Country C.

A.2 BEPS now more prevalent due to technology

As businesses have continued to become more global in scope and reach, BEPS is believed to have become more prevalent. Additionally, developments in computer and telecommunications technology in recent decades have made it easier for business enterprises to engage in activities that may affect the tax jurisdiction in which they report income **without substantively changing where business activities take place**. Indeed, these technological developments have made it easier for many enterprises to do business within a tax jurisdiction without being subject to tax under traditional income tax rules, **even without special tax planning**. Such technologies have also increased the degree to which income is dependent on intangible assets, and not on tangible fixed assets such as factories.

A.3 MLI Issuance

In November of 2016, OECD released the language of the MLI, with the intent that countries would begin signing it. The MLI addressed several of the actions it identified as being key steps to reduce BEPS. Specifically, the MLI included provisions that intend to achieve the following in advanced manner:

- Neutralize the effects of hybrid mismatch agreements **(Action 2)**
- Prevent treaty abuse **(Action 6)**
- Prevent the artificial avoidance of PE status **(Action 7)**
- Make dispute resolution mechanisms more effective **(Action 14)**
- Develop a multilateral instrument **(Action 15)**

Signing tax jurisdictions need not apply the provisions of MLI to all of their tax treaties. Furthermore, the MLI only applies to tax treaties signed by two parties that desire to have the MLI cover. In MLI's language, treaties that both parties want covered are referred to as 'covered tax agreements' or CTAs.

A.4 MLI and Model Tax Convention of OECD

Each of the substantive provisions of MLI includes at least one clause recommending a measure to reduce BEPS. This language is essentially equivalent to the language developed by OECD for its Model Tax Convention.

B. DISCUSSION OF RELEVANT PARTS OF MLI

B.1 Part II: Hybrid Mismatch Agreements – Action 2 of BEPS

Part II of the MLI deals specifically with **Action 2** and thus seeks to neutralize the effect of hybrid mismatches with following articles of MLI:

Article 3 deals specifically with 'transparent entities' or entities whose income is taxed to the owner rather than the entity itself (sole proprietorships, flow-through entities, pass-through entities or fiscally-transparent entities, partnerships, limited partnerships and limited liability partnerships, S corporations, income trusts and limited liability companies). This provision requires signing jurisdictions to treat the income of transparent entities as income of a resident to the extent that the jurisdiction treats such a transaction as income. This provision also prohibits the contracting jurisdictions from providing tax exemptions, credits, or deductions for taxes paid by their residents on income that the other jurisdiction may tax, if the only basis for the other jurisdiction's right to tax the income is that the taxpayer is a resident of the other jurisdiction. In other words, Country A is not permitted to give tax relief to Resident 1 on income that Country B can tax if the sole reason Country B can tax that income is that Country B views that income as income of a resident of Country B. Under this provision, the mere fact that an entity is a resident of one contracting jurisdiction does not itself eliminate the other jurisdiction's ability to tax its income. Thus, where applied, this provision makes it more difficult for taxpayers to avoid taxes in one jurisdiction by using a transparent entity to conduct business in that jurisdiction.

Article 4 of the MLI addresses how contracting jurisdictions will resolve situations in which a non-individual taxpayer appears to be a citizen of both of the signing jurisdictions. It provides that if the taxing jurisdictions both identify a taxpayer as a resident of their jurisdiction for tax purposes, "the competent authorities" of the two jurisdictions will "endeavor to determine by mutual agreement" which jurisdiction will be the taxpayer's tax residence. This is to be determined based on the taxpayer's place of effective management, place of incorporation or organization, and 'any other relevant factors'. In essence, Article 4 establishes a commitment of the signing jurisdictions to try to agree upon the jurisdiction that is to be taken as residence of a non-individual taxpayer.

Article 5 offers three potential options for signing tax jurisdictions to implement in order to eliminate double taxation.

- **Option A:** Exemption method within CTA will not be applied for the purpose of eliminating double taxation if the other contracting jurisdiction exempts the income or capital from tax or limits the rate at which such income or capital may be taxed. In other words, both tax jurisdictions cannot exempt from taxation or apply a reduced tax rate on the same tax base using the same CTA agreement.
- **Option B:** A contracting jurisdiction would not apply the exemption method with respect to dividends if those dividends are deductible in the other contracting jurisdiction.
- **Option C:** The credit method should be restricted to the net taxable income.

Each of these three options seeks to minimize the opportunities for taxpayers to avoid tax in two jurisdictions simultaneously.

B.2 Part III: Treaty Abuse – Action 6 of BEPS

Part III of MLI focuses on Action 6 of the BEPS Project and seeks to address a number of concerns regarding 'treaty abuse' with following articles:

Article 6 makes it mandatory to include a preamble, as a part of CTAs, that expresses a desire to eliminate double taxation without creating opportunities for non-taxation or reduced taxation; and provides optional language to express a desire for developing economic relationship between the signing jurisdictions.

Article 7 deals with numerous issues pertaining to Action 6. First, it applies to what is often referred to as the 'principal purpose test'to CTAs. This means that a taxpayer will not receive the benefits of a CTA in a particular instance if it is reasonable to conclude that one of the principal purposes of the arrangement or transaction is to obtain the CTA benefit. However, there are two exceptions to this: The first permits the taxpayer to receive CTA's benefits when doing so agrees with the purpose of applicable provisions of CTA, whereas, the other exception permits the taxpayer to receive the benefit when the taxpayer would have received CTA's benefit even if it had not engaged in the pertinent behavior in order to obtain the treaty benefit. Article 7 also provides what MLI refers to as the 'Simplified Limitation on Benefits Provision'. Under this rule, most of the benefits provided by CTA are only available to such

residents of any one of the signing jurisdictions that are "qualified person(s)" with some exceptions.

Additionally, residents of a contracting jurisdictions can receive treaty benefits if they are 'engaged in the active conduct of a business'in their jurisdiction of residence and they generate income in other jurisdiction as a result of that business. In such cases, they are entitled to CTA's benefits for income that has arisen in the other jurisdiction from their business activity or that of a connected person in the other jurisdiction if that business activity is substantially related to, or complementary to, business conducted in the other jurisdiction. Finally, a resident of a contracting jurisdiction can receive CTA's benefit if that resident is owned at least 75% by persons who are entitled to those tax benefits or more favorable ones for at least half of the days of a twelve-month period, including the time when the benefit would be accorded. These provisions make it more difficult for non-residents to benefit from tax treaty provisions in jurisdictions in which they are not residents, potentially eliminating many tax-planning opportunities.

Article 8 of MLI limits the extent to which internationally paid dividends that are exempt from tax are also deductible under a CTA. Specifically, under Article 8, CTA provisions that reduce or eliminate tax on dividends from a company in one contracting jurisdiction to an owner in the other contracting jurisdiction only apply if the owner has had the requisite ownership interest for a period of 365-days or more. This theoretically reduces opportunities for businesses to receive treaty benefits on dividends received from stock held for only a short amount of time.

Article 9 of MLI makes it more difficult to avoid capital gain taxation under CTAs by contributing real property to a business entity shortly before selling an interest in the entity. These provisions would make it difficult for entities selling interests in enterprises holding large amounts of real property to avoid taxation by contributing the real property shortly before selling the interest.

Article 10 addresses the OECD's concerns that taxpayers use permanent establishment(s) in third jurisdiction to avoid taxation in both of the parties to a bilateral tax treaty. This provision envisions a scenario in which a business located in Jurisdiction A generates income in Jurisdiction B, but Jurisdiction A treats the income as attributable to a PE in Jurisdiction C, and thus does not tax the income. In such cases, the MLI denies the benefits of an applicable CTA to any such item of income on which Jurisdiction C's tax is less than 60% of the tax Jurisdiction A would have imposed had the PE been in Jurisdiction A. Furthermore, that income will also be taxable to Jurisdiction B under its domestic law with some exceptions.

Article 11 limits the restrictions that CTAs place on contracting jurisdiction's ability to tax their own residents, thus preserving such powers with tax jurisdictions. It does so by stating that a CTA does not affect the ability of a contracting jurisdiction to tax its residents except in specified areas. This article thus, seeks to ensure that there are fewer opportunities under tax treaties for entities to avoid paying taxes to their jurisdiction of residence.

B.3 Part IV: Permanent Establishment (PE) Status – Action 7 of BEPS

Part IV of MLI focuses on Action 7 of BEPS Project and strives to make it more difficult for entities to artificially avoid PE status with following articles:

Article 12 of MLI makes it more difficult for entities to avoid PE status. The article provides that a business will have a PE in a contracting jurisdiction where a person acts on behalf of the business and habitually concludes or principally negotiates contracts in the name of the business, for transferring property rights owned by the business, or that commit the business to providing services. There is an exception to this rule where the business conducts these activities through a fixed place of business and the activities would be insufficient to make that place a PE under CTA. There is also an exception where the person concluding or negotiating contracts does so as an independent agent under the terms of the treaty in ordinary course of business.

Article 13 of MLI provides two options for contracting jurisdictions to limit the ability of business enterprises to avoid PE status determined by their activities:

- **Option A:** Only certain enumerated activities, including those included in a CTA as well as the maintenance of a fixed place of business solely for any activity included in the CTA, are permitted without causing a PE. A combination of exempt activities must be limited to those of a 'preparatory or auxiliary character'.
- **Option B**: It includes much of the same language as the previous option but provides a few additional restrictions on an activity that does not constitute a PE status. Additionally, it provides that a fixed place of business will

be accorded PE status where the business operating that fixed place or a related business carries on other business activities in the same tax jurisdiction as the fixed place of business that constitutes a PE, or makes the overall level of activity in the jurisdiction not of a 'preparatory or auxiliary character'. Under this additional rule, PE status only applies where business activities of an enterprise in the jurisdiction are 'complementary functions that are part of a cohesive business operation'. This seeks to limit businesses' abilities to avoid PE status by conducting business activities discretely within a particular tax jurisdiction.

Article 14 of MLI limits ability of international businesses to avoid PE status by temporally separating/bifurcating certain activities in a tax jurisdiction. In essence, this provision of MLI forces businesses to include short periods of time, or somewhat longer periods of time in the case of related businesses, in their aggregate amount of time working at a location in another tax jurisdiction. This makes it harder for businesses to avoid PE status by carrying out business in other locations through separate entities or by engaging in activities in other locations for short, discrete periods at a time.

B.4 Part V & VI: Dispute Resolution Mechanism – Action 14 of BEPS

Part V & VI of MLI focus on Action 14 of BEPS Project for more effective mechanisms for dispute resolution with following articles:

Article 16 establishes some of the procedures for determining how contracting jurisdictions resolve tax disputes that arise under MLI. Under this article, referred to as Mutual Agreement Procedure (MAP), a person who 'considers 'the actions of at least one of the contracting jurisdictions to tax that person in violation of CTA, may present its case to either jurisdiction's tax authority. This must be done within three years of the 'first notification 'of the action that results in taxation in violation of CTA. When the authority, to which such a case is brought, cannot resolve the issue, the tax authorities of contracting jurisdictions are then required to seek mutual agreement in accordance with CTA to resolve the issue. The tax authorities of the jurisdictions are also expected to endeavor to resolve difficulties or doubts in the interpretation or application of CTA. This provision, therefore, provides for the ability of persons to present grievances under CTA, and expresses the intent for the tax jurisdictions to resolve issues under CTA with mutual agreement.

Article 17 seeks to address situations in which both contracting jurisdictions attempt to tax the same income from two different enterprises. This article provides a scenario in which Jurisdiction A includes in the (taxable) profits of a domestic enterprise, amounts that Jurisdiction B has attributed as (taxable) profits to an enterprise located in Jurisdiction B. In such cases where the profits are attributed to the enterprise in Jurisdiction A; had the 'conditions' between the enterprises been those of independent enterprises, Jurisdiction B must adjust its tax on those profits. The adjustment so made should be in accordance with CTA, and the tax authorities of the jurisdictions are required to consult with each other, 'if necessary'. This provision of MLI provides procedures for tax jurisdictions to unilaterally address certain issues brought by taxpayers.

Article 19 of MLI provides for arbitration when a party brings an action on a controversial tax under Article 16 of MLI, claiming that one or both of the jurisdictions are taxing it in violation of the applicable CTA. Specifically, where tax authorities of two contracting jurisdictions are unable to resolve the matter within two years of one of several specified dates, any unresolved issues from the case are submitted to binding arbitration, if the party bringing the suit so desires. The arbitration is then implemented by mutual agreement with certain situations when arbitration is not binding on jurisdiction.

Article 22 provides that if tax authorities of contracting jurisdictions reach an agreement to resolve the issues; or the person who brought the case withdraws it prior to the delivery of arbitration decision, the arbitration proceedings are then terminated.

Article 24 provides that if the contracting jurisdictions reach a different agreement on all the issues within 3 calendar months of the delivery of arbitration decision, the arbitration decision is then not binding.

SUMMARY

MLI itself indicates that it is 'flexible'. While in some cases, this means that MLI provides multiple options for signing jurisdictions, in many cases, it provides the tax jurisdictions with the option of not adopting any of the provisions of MLI. The impact of non-adoption of an MLI provision is magnified by the fact that where one of the parties to a CTA has reservations against a provision of MLI, the provision will not apply to that CTA though, there are mandatory provisions within MLI which are relatively few. Accordingly, signing MLI does not, in and of itself, mean that tax jurisdictions are committing to

abide by all or even most of the provisions of MLI. Indeed, many of MLI's strictest and otherwise most impactful provisions are either optional or can be opted out of by signing jurisdictions. The entirety of Part II of MLI, addressing what OECD calls as 'hybrid mismatches'is optional for signing parties. Accordingly, mere signing of MLI does not necessarily bind a tax jurisdiction to classify transparent entity income as that of a resident, or to take measures to prevent double non-taxation, or to do anything to address Action 2 of BEPS Project.

The provisions of MLI dealing with prevention of treaty abuse only require slightly more action from signing jurisdictions. Specifically, all but Article 6, Article 7, and Article 9 within Part III of MLI are completely optional. Hence, measures limiting tax exemption of international dividends, provisions limiting the ability of entities to avoid tax by conducting business through entities in third jurisdictions, and provisions limiting the exceptions to a tax jurisdiction's ability to tax its own residents are entirely optional.

Even under the articles having mandatory requirements, the requirements are relatively minimal. Under Article 6, signing jurisdictions are only required to commit to including a preamble in their CTAs, indicating their desire of eliminating double-taxation and double non-taxation. Article 7 only mandates application of principal purpose test. Article 7 makes optional the Simplified Limitation on Benefits method, whereby it becomes more difficult for businesses to receive treaty benefits. In addition, provisions related to PE status and dispute resolution are also optional.

C. NOTIFICATION ON MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING BY THE FEDERAL GOVERNMENT OF PAKISTAN

The Federal Government has issued SRO 405(I)/2021 dated April 01, 2021 informing that Pakistan had signed the Multilateral Convention to Implement Tax Treaty Related Measures to prevent base erosion and profit sharing (MLI) on 7th June 2017, and had subsequently submitted a list of reservations and notifications and ratified MLI by depositing an instrument of ratification on 18th December 2020. Now the above Convention is in force on 1st April 2021 and shall have effect in each of the contracting jurisdiction with respect to CTAs.

We have presented the article wise summary of status of Pakistan as per its submitted MLI and reservations as follows:

MLI Articles	Description	Pakistan's position and its impact
Article 2: Interpretation of Terms	This article defines terms such as Covered Tax Agreement, party, contracting jurisdiction and signatory. The Agreements covered by the Convention are listed in this Article.	Pakistan has listed all 66 of its DTAs as CTAs in MLI which stand amended.
Article 3: Transparent entities	Addresses income earned through transparent entities	Not Adopted by Pakistan through raising reservation. Existing DTAs benefits will continue to apply to transparent entities.
Article 4: Dual resident entities	This article modifies the rules for determining the treaty residency of a person other than an individual that is a resident of more than one contracting jurisdiction.	Pakistan has not provided reservation in respect of applicability of this article. Accordingly, Pakistan chooses to apply this provision and notified 66 CTAs which use the place of effective management test as a tie-breaker rule to determine treaty residence of dual resident entity. However, this will only be effective if the other jurisdiction has also adopted this article without any reservations.

Article 5: Application of methods for elimination of double taxation	This article includes 3 options for contracting jurisdiction regarding methods of eliminating double taxation	Pakistan has adopted Option C i.e. tax credit method to provide relief to its residents. Pakistan's tax treaties which specifically include exemption method as notified are with Poland and Saudi Arabia, on which credit method will now apply. Now, if other jurisdictions choose other method, the Option chosen by Pakistan will apply to its own residents.
Article 6: Purpose of a CTA	This article provides preamble language of a CTA which is designed to ensure compliance with one of the minimum standards consisting of expressing the common intention to eliminate double taxation without creating opportunities for no or reduced taxation through evasion or avoidance, including by way of treaty shopping arrangements. Furthermore, countries were given an option to select the additional statement in the preamble, which provided that the treaty objective can also be to develop economic relationships and enhance cooperation in tax matters.	The mandatory preamble language automatically applies to all 66 CTAs notified. Pakistan also adopts optional additional language and has notified 66 CTAs which do not contain additional language.
Article 7: Prevention of treaty abuse	This article contains the provisions to be included in a CTA to prevent treaty abuse. As concluded in BEPS Action 6 final report, the prevention of treaty abuse should be addressed in one of the following ways: (i) a combined approach consisting of a Limitation of Benefits (LOB) provision and a Principle Purpose Test (PPT) (ii) a PPT alone (iii) an LOB provision, supplemented by specific rules targeting conduit financing arrangements The PPT method denies treaty benefits where, considering all relevant facts and circumstances, it is reasonable to conclude that obtaining such benefit is one of the main purposes for entering into a specific transaction or arrangement that resulted directly or indirectly in that benefit, unless if granting that benefit is not contrary to the object and purpose of the relevant provisions of CTA.	PPT is the only way that a contracting jurisdiction can satisfy the minimum standard on its own, as it is presented as the default option in Article 7 of MLI. Parties are allowed to supplement PPT by opting for a simplified LOB provision. A simplified LOB provision will apply if both jurisdictions to a CTA agree for its inclusion or when one jurisdiction chooses to apply the simplified LOB and the other jurisdiction agrees to its asymmetrical or symmetrical application. Pakistan has adopted Simplified LOB in addition to PPT.
Article 8: Dividend Transfer Transaction	It specifies anti-abuse rules for benefits provided to dividend transfer transactions in the form of exempting or limiting the tax rate	Pakistan has adopted requirement of minimum holding period and has notified 36 CTAs where a holding period

	on dividends paid by a company resident of a contracting jurisdiction to a beneficial owner or recipient that is resident of the other contracting jurisdiction, provided certain ownership requirements, which need to be met throughout a 365-day period that include the day of payment of the dividend, are met. The 365-day holding period will apply in place or in the absence of a minimum holding period contained in the provisions described above.	of 365 days is proposed to be applicable to obtain the benefit of a concessional tax rate on dividends.
Article 9: Capital gains from alienation of shares or interests of entities deriving their values principally from immovable properties	This Article provides for indirect transfer taxation to tax the capital gains arising from the alienation/sale of shares/comparable interest of companies/other entities (such as partnership or trust) that derive more than a certain percentage of their value (value threshold) from immovable properties. The taxation rights are provided to the country where such property is situated (i.e., the source state). It provides two alternatives: **Alternative 1** specifies that where the value threshold is met at any time during the 365 days preceding the alienation (look-back period), the capital gains from the sale of shares or comparable interests shall be taxable in the source country. Countries can bilaterally negotiate the value threshold in their tax treaties. **Alternative 2** is similar to Alternative 1 and, additionally, fixes a normative value threshold of more than 50% (i.e., share or comparable interest derives more than 50% of its value directly or indirectly from immovable property situated in source State) for the trigger of source taxation in this behalf.	Pakistan has opted Alternative 2 for all CTAs. Pakistan has also notified 32 CTAs which contain a provision described in Alternative 1 i.e. the relevant clause of the tax treaties where either the value threshold and/or look-back period of 365 days is not available. Pakistan has made a policy choice of adopting a value threshold of 50% and a look-back period of 365 days as its default option. Alternative 2 will get incorporated in Pakistan's CTAs if the other contracting jurisdictions opt for the same alternative.
Article 10: Anti-abuse rule for Permanent Establishment (PE) in third country	Tax treaty benefit not to apply to any item of income on which the tax rate in the third jurisdiction in which an exempt PE is located, is less than 60% of the tax that would be imposed in the country of residence.	Adopted by Pakistan
Article 11: Application of tax agreement to restrict a party's right to tax its own resident	This Article contains a saving clause rule that preserves a Party's right to tax its own residents.	Adopted by Pakistan and has been notified that CTA with Belgium already contains a provision of Article 11(2)

Article 12: Artificial avoidance of PE status through Commissionaire arrangements and similar strategies	This Article seeks to replace the agency PE provisions relating to the agent's activity dealing with the authority to conclude contracts. Other activities listed in tax treaties to trigger agency PE (like maintenance of stock and delivery, manufacturing and processing, securing orders etc.) remain unaffected by MLI. Independent agent exclusion is made stricter under MLI, when compared to various tax treaties, by denying exclusion to the agents who work exclusively for an enterprise and its closely related enterprises.	Pakistan has adopted provisions relating to definition of dependent and independent agents and has notified 66 CTAs containing the same.
Article 13: Artificial avoidance of PE status through specific activity exemptions	This Article deals with the artificial avoidance of permanent establishment status through the specific activity exemption. This article follows the contexts of Article 5 of Model Tax Convention with Option A and B available.	Pakistan has adopted Option A in the notified 66 CTAs. Now, as per Option A, the term 'permanent establishment' shall be deemed not to include; (a) the activities specifically listed in the CTA (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; (b) the maintenance of a fixed place of business solely for the purpose of carrying on any activity for the enterprise that is 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 14: Splitting up of contracts	This Article addresses avoidance of PE by splitting the contracts between related enterprises to circumvent the threshold of creation of PE.	Pakistan has adopted this article and has notified 2 CTA with Denmark and Ireland is proposed to be amended.
Article 15: Definition of closely related persons	It defines closely related persons to be applied on Articles 12, 13 and 14.	Pakistan has Adopted this article.

Article 16: MAP	The salient features of this Article are as follows: • The taxpayer can approach competent authority of either of the contracting jurisdiction (under the existing provision of Article 25 of OECD model convention the taxpayer can only approach the competent authority of the country of which he is the resident / national) • The taxpayer needs to present his case to the competent authority within three years of the first notification of the action resulting in taxation which is not in accordance with the provisions of tax treaty (Article 25 of OECD model convention contains similar provision) • The agreement reached among competent authorities shall be implemented irrespective of time limits in domestic laws (Article 25 of the OECD model convention contains similar provision)	Pakistan adopted these provisions without any reservations.
Article 17: Corresponding adjustments	This Article is based on Article 9(2) of OECD model convention and requires compensatory or corresponding adjustment if there is double taxation arising from transfer pricing adjustments.	Pakistan has adopted and has notified 50 CTAs that already contain the provisions as contained in Article 17(2).
Articles 18 to 26: Arbitration	These Articles deal with mandatory arbitration and issues such as appointment of arbitrators, confidentiality of arbitration proceedings, and resolution of a case prior to the conclusion of arbitration, types of arbitration process, etc.	Not adopted by Pakistan and will not affect existing DTAs.
Articles 27 to 35: Final provisions	Part VII deals with procedural provisions, such as signature, ratification, reservations, notifications, date of entry into force, date of effect, etc., to make MLI provisions effective and operational.	Pakistan has followed these procedural provisions. Pursuant to Article 35(2) of the convention, solely for purposes of its own application of Article 35(1)(a) and 35(5)(a), Pakistan has chosen to substitute ’taxable period‘ for ’calendar year’.

D. IMPACTS ON PAKISTAN AND WAY FORWARD

The MLI will affect certain provisions in many of Pakistan's tax treaties beginning on April 01, 2021.

Perhaps the most significant change is the Principle Purpose Test, given the breadth of its wording and the severity of its consequences.

Some of the technical changes, particularly the 365-day holding period test for dividends and the 365-day look-back test for capital gains, will also significantly affect many of tax treaties.

Clearly, when considering the application of Pakistan's tax treaty to a particular transaction, it is no longer sufficient to review the treaty alone. Pakistan's MLI position, OECD Matching Database, and other treaty partner's MLI position must all be consulted now and taken into account.

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