

The Times They are a Changin'

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Introduction

As we welcome the New Year, the future holds bright prospects for the nation. With strong leadership at the helm, the title to this article borrowed from the popular track of Bob Dylan is apt in reflecting the mood of the nation. The year 2016 has been a landmark year for India with India emerging as the fastest growing large economy in the world. One of the events that will stand out, for the year 2016 would be the demonetisation drive undertaken by our Prime Minister as a strong reform measure. During the demonetisation drive, one name to have featured prominently is that of top bureaucrat Mr. Hasmukh Adhia, who has played a crucial role in the successful implementation of this reform.

In one of the recent press interactions Mr. Hasmukh Adhia has mentioned the next reform target would be international tax treaties in line with the Base Erosion and Profit Shifting (BEPS) Action Plan. Therefore, in this Article the author will be focusing on BEPS Action Plan – 15: Developing a Multi-Lateral Instrument to Modify Bi-Lateral Tax Treaties.

BEPS Action Plans

International tax issues have never been as high on the political agenda as they are today. The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for BEPS, requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created. As a result, the BEPS Action Plan was developed by the OECD Committee on Fiscal Affairs (CFA) and endorsed by the G20 Leaders in September 2013. It identified 15 actions to address base erosion and profit shifting (BEPS) in a comprehensive manner, and set out deadlines to implement those actions.

Implementation of the Final BEPS Package will require changes to model tax conventions, as well as to the bilateral tax treaties based on those model conventions. The sheer number of bilateral treaties (more than 3000) would make bilateral updates to the treaty network burdensome and time consuming, limiting the effectiveness of multilateral efforts.

Action 15 of the BEPS Action Plan provided for an analysis of the possible development of a multilateral instrument to implement tax treaty related BEPS measures “to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties”.

BEPS Action Plan – 15

BEPS Action Plan – 15: Developing a Multi-Lateral Instrument to Modify Bi-Lateral Tax Treaties, concluded that a multi-lateral instrument, providing an innovative approach to enable countries to swiftly modify their bilateral tax treaties to implement measures developed in the course of the work on BEPS, is desirable and feasible, and that negotiations for such an instrument should be convened quickly.

In line with the BEPS Action Plan – 15, a mandate for the formation of an *ad hoc* Group for the development of a multilateral instrument was approved by the CFA and endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015. The mandate provided that the *ad hoc* Group should develop a multilateral instrument to modify existing bilateral tax treaties in order to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. It also provided that the *ad hoc* Group should conclude its work and open the multilateral instrument for signature by 31 December 2016. As on 24 November 2016 the *ad hoc* Group has completed the work on the Multilateral instrument and a signing ceremony is proposed to be held in June 2017 in Paris.

Multi-lateral Convention to Implement Tax Treaty related measures to prevent BEPS (Multi-lateral convention)

The Multi-lateral convention drafted by the *ad hoc* Group which consisted of 99 Countries including India is a comprehensive document featuring 39 Articles spread over VII parts. Following is an outline of the convention:

Part - 1	•Deals with scope and Interpretation of terms in the Multi-lateral convention
Part - 2	•Covers issues relating to Hybrid Mismatches arrangements which exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation, including long-term deferral
Part - 3	•Covers situation of Treaty abuse. It has provided for a preamble to tax treaties to prevent treaty abuse along with Limitation of Benefits Clauses
Part - 4	•Focuses on Avoidance of Permanent Establishment Status, narrowing the scope of Article - 5, to eliminate many current tax planning strategies such as Commissionaire Arrangements etc.
Part - 5	•Relates to BEPS Action Plan - 14, which contains a commitment by the jurisdictions engaged in the work to implement a minimum standard for improving dispute resolution
Part - 6	•Provides an Arbitration mechanism
Part - 7	•Contains the Final provisions such as Signature and Ratifications, Acceptance or Approval etc.

Operation of the Multi-lateral convention

The Multi-lateral convention operates to modify tax treaties between two or more Parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement; instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. As a result, while for internal purposes, some Parties may develop consolidated versions of their Covered Tax Agreements as modified by the Convention, doing so is not a prerequisite for the application of the Convention.

Conclusion

These are exciting times to be a tax professional with the current reforms taking place in the tax space both in Indirect taxes and Direct Taxes. The Multi-lateral convention will be a landmark legislation in International taxation law. As we begin the new year, it will be a whole new set of learnings, when the Multi-lateral convention is adopted. India has been taking an active part in the BEPS project and we have already legislated Country-by-Country Reporting Framework via Sec. 286 of the Income-tax Act, 1961, which was a BEPS Action Plan – 13 recommendation. Therefore, it is highly likely that the Multi-lateral convention will be adopted by the Central Government and Mr. Hasmukh Adhia's thoughts in the introduction of this article should serve as a precursor to the intentions of the government. Wishing all the readers a Happy New Year and Happy Reading.
