Latest Happenings in International Taxation

T. P. Ostwal

International tax issues have never been higher 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 century old international tax rules. Weaknesses in these rules created opportunities for base erosion and profit shifting which required 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. Over several decades and in step with globalisation of the economy, world-wide trade has grown exponentially. The significance of the tax provisions and rules used by tax administrations has increased in light of the growing international trade. As the OECD's BEPS Action Plan identified in 2013, the existing international standards for transfer pricing rules can and are being misapplied so that they result in outcomes where the allocation of profits, and thereby payment of taxes, is not aligned with the economic activity that produced such profits. BEPS Action Plans have created opportunities and challenges.

In India also, the last few years have seen several changes in the domestic tax laws, both pertaining to domestic tax issues and aspects of international taxation. The introduction of the Place of Effective Management rule ("POEM") to determine the residential status of foreign companies, implementation of Country-by-Country reporting in line with BEPS Action Plan 13, codification of an Equalisation Levy to deal with the Digital Economy in terms of the BEPS Action Plan 1, the renegotiation of old tax treaties such as the controversial Indo-Mauritian treaty, and the signing of new tax treaties and exchange of information agreements, the imminent application of General Anti-Avoidance Rules, notification of rules on indirect transfer of Indian shares/ assets and rules on availing Foreign Tax Credit – the changes have come thick and fast.

The government is not done yet either – the possibility of Thin Capitalization Rules and Controlled Foreign Corporation ("CFC") rules being implemented along with other significant changes in the upcoming Budget of 2017 are high.

This paper throws light on recent reforms and possible forthcoming changes, both domestic as well as global, in the arena of international taxation listed below:

(a) Equalisation Levy
(b) GAAR
(c) POEM
(d) Thin Capitalisation Rules
(e) CFC Rules
(f) Signing of Multilateral Convention to amend tax treaties

Equalisation Levy

The initiative of the OECD against BEPS has gains global consensus – if not in the manner of going about the project, at least in the need for the same. India, having committed to the adoption of BEPS Action Plans has already introduced several suggested measures in the domestic law. Being a developing economy, adopting measures to curb profit shifting and protecting the tax base is an important aim of the tax administration.

India has already adopted several measures that tackle the issues targeted by the BEPS Action Plans. Action Plan 1 of the OECD's base erosion and profit shifting (BEPS) Action Plan deals with taxation of the Digital Economy. It recognized the complexity involved in taxing digital transactions – transactions which involve multiple jurisdictions with complicated structures employed for efficiency, and often, tax planning. Ensuring that each country gets its fair share of tax from the profits earned by e-commerce companies and that the laws dealing with taxation of such transactions are consistent across jurisdictions are the objectives of Action Plan 1.

In India, already an important market for foreign e-commerce revenues with tremendous future potential, this issue was high on the government's agenda. In April 2016, the Finance Minister introduced an 'Equalisation Levy', popularly known as 'Google Tax', a self-contained code to tax Digital Ecommerce transactions under Chapter VIII of the Finance Act, 2016. From June 2016 onwards, a 6% cess would be levied on the consideration payable to a foreign E-commerce company for certain online services.

The Indian government's decision came in the wake of 'Operation Tulip' by which French authorities investigated and indicted Alphabet, the parent company of search giant Google, for evading back taxes of almost to US$ 2 billion. The United Kingdom in 2015 and Australia in January 2016 had also introduced similar taxes. The UK and Australia measures took effect in advance of the Base erosion and profit shifting measures which were considered at recent G20 summits.

The issue of taxing companies like Google has embroiled into controversy in UK. Search giant Google paid UK a negligible amount as tax by completing its transactions in Dublin (capital of Ireland) instead of UK, even though it earned revenue of $6.5 billion in UK. Recently, the company has agreed to pay $185 million in back taxes to the UK.

The Hon'ble Finance Minister in his budget speech has stated that the Equalisation Levy was aimed at taxing Business to Business (B2B) e-commerce transactions. Therefore, the scope of the levy may be expanded to cover a larger gamut of digital goods and services as the time progresses.

The EL is levied at 6% on the gross consideration payable for a 'Specified Service'. These 'Specified Service' have been defined to include online advertisement and any other service providing digital advertising space or facilities/ service for the purpose of online advertisement, with a provision for the government to further notify other services on which EL would apply.

The levy will be applicable on the payments received by a non-resident service provider from an Indian resident or an Indian Permanent Establishment ('PE') of a non-resident, in respect of the specified service. The levy would not be applicable to non-resident service providers having a PE in India, as they will be subjected to a regular PE basis taxation. The levy is currently applicable only on B2B transactions, if the aggregate value of consideration in a year exceeds INR 1,00,000. The Income Tax Act has also been amended to exempt from income tax any income of a foreign entity on which EL is chargeable.

The payment of levy works similarly to TDS – the payer must withhold the amount of the levy from the payment being made and remit only the 'net amount' to the payee. The EL therefore, results in collection of duty by the Indian government on amounts that would otherwise have been exempt from taxation in India.

However, in practice since the fees or consideration that is payable by the Indian entities to the foreign e-commerce service providers has been fixed and the foreign e-commerce businesses generally have greater bargaining power in their dealings as compared to the Indian businesses they are serving. They therefore negotiate to pass on the burden of the EL onto the Indian entity and ensure that they receive the amount they would have received in a situation where the EL did not exist. This has merely made the cost of online advertising on foreign-owned websites higher for Indian companies.

There is also no mechanism to get a refund of EL in a situation where the EL is paid in the absence of a Permanent Establishment but subsequently a PE is established leaving the tax payer vulnerable in both ways.

Be that as it may, the intention behind the EL and similar taxes is that it will prevent base erosion and shifting of profits from the high tax-rate countries to lower tax-rate jurisdictions. The levy should also incentivize companies to establish permanent establishments in India and to get taxed on their net income earned instead of the current 6% tax on gross receipts.

Google earned revenues of Rs. 4,108 crore in 2014-15 as per its disclosure. Goldman Sachs has estimated the e-commerce market to grow to $300 billion by 2030 from the current $20 billion. According to the budget, digital economy in India is growing at 10% per year which is faster than the global economy as a whole. So, taxing the technology companies in this manner could earn sufficient revenue without overburdening the administration and the legal system.

As the EL is an indirect levy, it falls upon Indian advertisers to collect the 6% tax and deposit it with the government. Hence it is felt that the Googles and the Amazons are simply more likely to increase the price of their products or services to recoup the taxed amount or simply negotiate to pass on the burden of the EL to the Indian advertisers. Thus, it is the start-ups and new ventures that are a part of the 'Make in India' campaign stand to lose as the cost of doing business increases. This makes it more difficult for them to use such platforms for marketing and advertisement and this difficulty is further exacerbated by the absence of other viable alternatives to their dependence on online resources. More established companies, on the other hand, always have the option of depending on other legacy channels (such as television, newspapers, outdoor advertising, etc.) for promotions and operations. As the cost of operation increases, the price is also likely to increase for the end-customer. Recent reports that the government may increase the EL from 6% to 8% have been met with concern and opposition from the business community in general.

However, there is also the argument that as the Indian market gains significance in terms of size and value, the e-com giants would be more than willing to bear the 6% hit on their top-line, since the returns would easily outweigh this cost. The Indian advertisers too are glad to have clarity regarding the taxation aspect on foreign payments and some feel that the 6% rise in cost is not too high to absorb, given the reach and returns available from online advertising.

General Anti-Avoidance Rules

While the Equalisation Levy has not been a very controversial reform, the General Anti-Avoidance Rules ("GAAR"), have been the focus of length discussions.

However, before addressing GAAR, it is necessary to understand the differences between tax avoidance and tax evasion and mitigation

Tax Mitigation is a situation where the taxpayer uses the fiscal incentives available to him in the tax legislation by submitting to the conditions and economic consequences that the particular legislation entails. Tax mitigation is thus allowed under the tax statute.

Tax evasion is unlawful and is the result of illegality, suppression, misrepresentation, and fraud and hence unacceptable in the law itself.

Tax avoidance is the outcome of actions taken by the tax payer, none of which or no combination of which is illegal or forbidden by the law as such. It is an arrangement entered into solely and primarily for the purpose of obtaining a tax advantage. Tax avoidance through artificial structures, is economically undesirable and hence a taxpayer should not be allowed to use a legal structure or transaction exclusively to avoid tax.

Avoidance methods remain unaddressed other than through specific anti-avoidance provisions and through judicial decisions.

According to the GAAR provisions, while interpreting the tax legislation, the substance of an arrangement or transaction should be selected over its mere legal form. There cannot be any objection to legitimate tax planning, but tax planning without any supporting justification in terms of commercial, economic or business purpose is undesirable. Thus, if there is no business purpose except to obtain a tax benefit, the GAAR provision would not allow such a tax benefit to be availed through the tax statute.

India's tax treaties contain specific anti-avoidance rules (SAARs), such as place of effective management for deciding the residence of non-individuals in article 4, the restricted force of attraction rule as per article 7(1), article 9 dealing with associated enterprises, articles 10, 11, and 12 dealing with dividends, interest and royalties with respect to beneficial ownership for concessional tax treatment, the special relationship rule with respect to interest and royalties in articles 11 and 12, alienation of shares of real estate entities in article 13(4), and artistes/sportsmen companies in article 17(2).

Recently, in some treaties, there is a general limitation on benefits (LOB) article patterned along the lines of a mini-GAAR while in some treaties there is subjective and objective LOB criterion prescribed. It is thus evident that the India's tax treaties are subject to numerous SAARs and there is a growing body of evidence that new/re-negotiated tax treaties will have more elaborate LOB and specific anti-abuse insertions. It therefore, behoves consideration whether in the context of tax treaties the domestic GAAR provisions should have a role.

The Finance Act, 2012 introduced the GAAR provisions under Chapter X-A (Section 95 to 102) of the Income Tax Act, 1961. The provisions of GAAR were given the power to override treaty provisions. The applicability of GAAR was deferred to become applicable from 1st April 2017 instead of 1st April 2013.

Recently, the CBDT notified a much-awaited amendment to the GAAR Rules in June, 2016 (These are contained in Rule 10U to Rule 10UC of the Income Tax Rules, 1962). This notification grandfathered all incomes arising out of the transfer of any investments made prior to April 2017. However, all arrangements remained within the ambit of GAAR, irrespective of when such arrangement was made, if the tax benefits from such arrangements arise after April 2017. Despite these clarifications, the government should have provided examples of 'arrangements' it would deem to be impermissible, thereby giving some practical clarity and forewarning to tax payers.

The fact that GAAR targets only those arrangements where the total tax benefits exceed Rs. 3 crore would be a relief to smaller entities and groups where the tax benefits are not significant and would also ensure that undue litigation and overburdening of an already overburdened judicial system is avoided in cases where the Revenue would not benefit through large tax collections.

India's GAAR provisions, though conceptualized and introduced in the Act much before the publication of the BEPS Action Plans, come under Action Plan 6 which aims at preventing Treaty Abuse. The insertion of Limitation of Benefit clauses into tax treaties is a measure to complement GAAR in the adoption of measures under Action Plan 6.

Place of Effective Management

In addition to GAAR, India has also introduced the concept of POEM into the provisions dealing with international taxation. Section 6(3) of the Act, which deals in determining residential status of companies, and therefore is vital in defining what income of foreign companies would be taxed in India and what would be out of the purview, was amended.

From April 2017, a company will be considered to be a tax resident of India if it is incorporated in India or if its place of effective management (POEM) is in India.

The Explanatory Memorandum to Budget 2015 provided that the change was brought in mainly to bring in to the tax net shell companies which were incorporated outside India by Indian residents. Such companies were effectively managed from India. However, the earlier provision allowed such companies to remain non-resident by making sure that just a part of its management lies outside India.

It further mentioned that the Income-tax Department will come out with Guidelines on determining where a company's place of effective management is situated. However, these guidelines have still not been finalised. Draft Guidelines were issued in December 2015. Several representations have been made on the same. However, the final guidelines have still not been issued. Meanwhile, the POEM provision had become effective from 1st April 2015 itself.

Since there was general lack of clarity in relation to applicability of the POEM provision to a particular foreign company in the absence of concrete guidance from the tax department, representation was made for deferring this provision. So, in the Finance Act, 2016 the POEM provisions were deferred to 1st April 2017 (i.e. they would become applicable from Assessment Year 2018-19). However, still there is no final guidance issued by the tax department in relation to POEM.

Place of effective management is the country where key management and commercial decisions necessary for conduct of business of an entity as a whole are, in substance, made.

The residence article in the OECD Model Convention provides a tie-breaker rule for determining residence where an entity is resident in two different countries. The residence of such a dual resident entity is determined to be in the country in which its POEM is situated. OECD Commentary mentions that POEM is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. The definition of POEM provided under the Act is in line with the OECD Commentary.

The United Nation (UN) Model Convention also provides the tie breaker rule for determining residence of a dual resident company which is based on the POEM of that company in a particular jurisdiction. Though UN Model commentary does not provide meaning to the term POEM, it provides illustrative list of factors which may establish a POEM of a company in a particular country which is similar to the factors considered under the OECD Model Commentary.

In brief, the draft guidelines issued by CBDT for determination of the POEM of a company provide the following:

- Process and guidance for determination of POEM of companies — both that are engaged in active business outside India and those that are not.
- Factors, which by itself would not lead to a conclusion that POEM of a company is situated in India.
- Process to be followed by an Assessing Officer in case of a finding that a company incorporated outside India is resident in India due to its POEM being in India.

POEM has to be determined based on facts of each case after looking into the activities of the foreign company in India as a whole and in substance. The above discussion on definition and key factors may assist in determining the POEM of a company but may not be comprehensive and all relevant facts and circumstances must be examined on a case-by-case basis. There are generally various facts that are required to be taken into account, often involving multiple locations, and from those facts and locations it is necessary to determine a single principal place where effective management is located.

There are several implications on a foreign company being held to be an Indian resident due to POEM provisions. If a foreign company is considered tax resident of India, it needs to submit its world-wide income to tax in India; comply to the advance tax provisions; and file its tax return in India. Apart from these immediate implications, the company would need to comply with TDS obligations; transfer pricing provisions; and will have issues under foreign tax credit.

In the guise of their clarificatory guidelines, the government has seemingly gone beyond the provisions of the law by introducing a distinction between ‘active’ and ‘passive’ income and ‘active business’ and ‘passive business’ – a distinction which is not present anywhere in the Income Tax Act.

As POEM test is subjective, there can be instances where a foreign company is held to be resident in India only on conclusion of assessment proceedings. If it is so held during assessment proceedings, it would be impossible for the foreign company to comply with any of the Indian tax provisions as the deadlines would have been crossed. Further, in most cases, facts remaining the same, the company can be held to be Indian resident for the following tax years too.

Therefore, the Finance Act, 2016 has introduced a new Sec. 115JH to provide for transition mechanism in such cases. It is stated that the Government would issue a notification providing exemption or modification to such companies with regard to computation of income; treatment of unabsorbed depreciation; set off or carry forward of losses; collection and recovery of taxes and transfer pricing provisions. These provisions will apply to those foreign companies which become Indian residents for the first time. However, the relevant notification promised u/s 115JH and the final guidance rules on POEM are missing-in-action.

Thin Capitalisation Rules

While companies and businesses grapple with the implications under GAAR or POEM or even the Country-by-Country reporting requirement (which will be effective from April 2017), the Budget of 2017 may add to their concerns if CFC rules and Thin Capitalization rules are introduced.

While GAAR does contain provisions which would allow the taxman to re-characterize debt as equity and vice versa, there is no limit on companies having distorted balance sheets with minimal capital and large quantity of debt.

Debt financing of cross-border transactions is often favourable than equity financing for foreign investors in India. This is because payment of interest is a tax deductible expense whereas payment of dividend is regarded as appropriation of profit – which also faces a dividend distribution tax.

When more debt is used than "normal" as compared to equity, it amounts to gearing the capital structure for taking "undue" tax advantage and could trigger thin capitalisation rules. Thin capitalisation is nothing but hidden equity capitalisation in the form of excessive loans. Though the loan may be at market interest rate, the quantum is not justified based on bona fide business considerations.

The provisions are mainly to have check on the excess funding through debts and thereby excessive claim of deduction of on account of interest. This prevents the erosion of tax base by reducing artificial interest deduction from the taxable income from operating income.

Thin capitalisation rules typically operate by means of one of two approaches:

a. Determining a maximum amount of debt on which deductible interest payments are available

Thin capitalisation rules often operate by limiting, for the purposes of calculating taxable profit, the amount of debt that can give rise to deductible interest expenses. The interest on any amount of debt above that limit ("excessive debt") will not be deductible for tax purposes. Countries take different approaches to determining the maximum amount of debt that can give rise to deductible interest payments, but there are generally two broad approaches:

The "arm's length" approach (determining borrowing capacity): Under this approach, the maximum amount of "allowable" debt is the amount of debt that an independent lender would be willing to lend to the company i.e. the amount of debt that a borrower could borrow from an arm's length lender.

The "ratio" approach: Under this approach, the maximum amount of debt on which interest may be deducted for tax purposes is established by a pre-determined ratio, such as the ratio of debt to equity.

b. Determining a maximum amount of interest that may be deducted by reference to the ratio of interest (paid or payable) to another variable

Some countries employ a ratio approach that focuses on the amount of interest paid or payable in relation to the amount of income out which that interest is paid. This is sometimes referred to as an “earnings stripping” approach. The applicable ratio may be by reference, for example, to a ratio of the amount of interest to operating profit or a measure of cash flow (e.g. an interest to EBITDA ratio). Germany and Italy, for example, generally cap the deductibility of interest to 30% of EBITDA.

Depending on specific legislative approach which the India government chooses, transfer pricing rules may or may not apply to determine the amount of the loan.

The existing transfer pricing regulations in India cannot address the thin capitalization abuse as the transfer pricing regulations unequivocally apply to the rate of interest (or similar condition) applied to its loans and not to the loan itself.

Some countries and commentators take the view that transfer pricing rules that are in line with Article 9 of the OECD Model Tax Convention may be sufficient to disallow interest relating to debt in excess of an arm’s length amount - and thus can be used to enforce an “arm’s length" thin capitalisation regime.

However, in order to provide certainty and clarity, many countries typically introduce specific thin capitalisation provisions, even where they adopt a purely arm’s length approach and have existing transfer pricing rules that apply the arm’s length approach.

Controlled Foreign Corporation rules

While Thin Capitalization rules focus on preventing overseas holding companies repatriating profits of their Indian subsidiaries through under-capitalization, the CFC rules have a reverse focus. These rules, if implemented, would seek to ensure that the overseas subsidiaries of Indian companies that are located in low-tax jurisdictions are not merely shell companies created to park income outside India and therefore avoid or defer paying taxes in India.

In past, the Act had sections 104 to 109 to levy additional tax on undistributed profits including that of resident companies. The Finance Act 1987 withdrew these provisions. Circular 495, dated 22 September 1987, explained this withdrawal as follows:

“10.1 Sections 104 to 109 relate to levy of additional tax on certain closely-held companies (other than those in which the public are substantially interested) if they fail to distribute a specified percentage of their distributable profits as dividends. These provisions had lost much of their relevance with the reduction of the maximum marginal rate of personal tax to 50 per cent which is lower than the rate for corporation tax on closely-held companies. Sections 104 to 109 have, therefore, been omitted by the Finance Act, 1987.”

As a substitute, deemed dividend provisions in section 2(22)(e) of the Act were suitably amended to take care of the abuse. Circular 495 dated 22 September 1987 read as follows:

"10.2 With the deletion of sections 104 to 109 there was a likelihood of closely-held companies not distributing their profits to shareholders by way of dividends but by way of loans or advances so that these are not taxed in the hands of the shareholders. To forestall his manipulation, sub-clause (e) of clause (22) of section 2 has been suitably amended."

The CFC rules in India would possibly be similar to sections 104 to 109 discussed above, in that they would compel foreign subsidiaries of Indian companies to distribute their profits in India and have them taxed at 15% instead of keeping them stashed offshore and possibly have them taxed at a higher rate under the CFC rules.

India is essentially a capital importing country and until recently, there was not much of outbound investment from India. However, in the last 5-10 years, India has witnessed a sharp rise in outbound investments, thereby necessitating regulations around taxation of foreign passive income in its tax legislation. While India currently does not have CFC legislations as a part of its tax legislation, it was proposed that the Act would be replaced with a new tax code called "The Direct Taxes Code" (DTC).

One of the significant proposals in the draft DTC is the introduction of the concept of CFC.

Taking a leaf out from the Vijay Mathur Committee reforms, the then Union Minister Shri Pranab Mukherjee introduced CFC Regulations in the Revised Direct Taxes Code Bill, 2010 ('DTC') for public suggestions. Along with the multiple objectives of eliminating distortions in the tax structure, rationalization of tax levies, enhanced tax compliance and reduction in tax litigations, the government had set its sights high on broadcasting the sources from which it could generate revenue. The clearest indication of this can be seen in the proposals to bring in the regime of CFC regulations in final draft to DTC. Thus, in view of the above, India, at the time of introduction of The Direct Taxes Code" (DTC) proposed to introduce a separate regime of Controlled Foreign Corporation ('CFC') Rules, in line with the established international practice, to deny the deferral of such fouled income earned through foreign corporation.

The present law does have a provision which gives incentives to the resident parent companies to bring in the money earned from the foreign subsidiaries in to India by taxing the dividends received from such foreign subsidiaries at the rate of 15% u/s 115BBD of ITA.

Some countries which give more importance to the principle of territoriality do not currently apply CFC rules. For those countries CFC rules would have to be limited to targeting profit shifting. However, where countries, like India, which have worldwide tax systems, they may also be concerned about long-term deferral and therefore their rules may have broader policy objectives (for example, preventing long-term base erosion rather than only preventing profit shifting).

In 2015, the OECD released its final report on strengthening CFC rules under Action 3 of its BEPS Action Plan. The final recommendations are in the form of "building blocks" that are considered necessary for the design of effective CFC rules.

- Definition of a CFC (including the definition of control)
- CFC exemptions and threshold requirements
- Definition of CFC income
- Computation of income
- Attribution of income
- Prevention and elimination of double taxation

The recommendations are not minimum standards, but they are designed to ensure that countries which choose to implement them will have CFC rules that effectively prevent taxpayers from shifting income into foreign subsidiaries. The OECD clearly recognizes the need for flexibility in this area, as the design of CFC rules in different countries reflect differing policy objectives, in particular depending on whether they have a worldwide or territorial tax system or whether they are EU members. The definition of CFC income is one of the key building blocks, but is an area where there are clearly differing views. A non-exhaustive list of approaches (e.g. substance and excess profits analysis) has been included to accommodate those differing views.

In the Indian context, given that the amount of overseas investment by Indian entities or companies is currently not significant, the introduction of CFC Rules may not be of immediate relevance. However, given the anticipation of growth of Indian economy and correspondingly overseas outbound investment, it is important to understand these recommendations of the OECD and also plan the businesses for the same.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

While the above changes were with respect to reforms brought about in India's tax laws, a very recent development, the signing of a Multilateral Convention, will impact almost all of India's tax treaties currently in force. In the last week of November, 2016, more than 100 countries, including India, concluded negotiating a convention which will swiftly implement a series of tax treaty measures to update international tax rules and reduce the opportunity for tax avoidance by multinational enterprises.

The new instrument will transpose results from the OECD/G20 BEPS Project into more than 2000 tax treaties worldwide. The signatories have agreed to implement minimum standards to counter treaty abuse and improve dispute resolution mechanisms. The convention provides flexibility to accommodate specific tax treaty policies & allow governments to strengthen their tax treaties with other tax treaty measures developed in the OECD/G20 BEPS Project. A formal signing ceremony will be held in June 2017 in Paris.

The OECD BEPS Project sets out 15 actions, many of which cannot be tackled without amending bilateral tax treaties. Given the sheer number of treaties in effect, implementing these changes on a treaty-by-treaty basis would be a very lengthy process. Recognizing the need for an efficient and effective mechanism to implement the tax-treaty related measures resulting from the BEPS project, Action 15 of the BEPS Action Plan called for the development of a multilateral instrument (MLI) that could amend all existing bilateral tax treaties at once.

The MLI, formally known titled the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting' is modular, with various alternative approached possible (e.g., with respect to the anti-treaty shopping provisions) and gives participating states the ability to opt in or out of specific MLI's provisions. With respect to the treaty measures that are BEPS minimum standards, the flexibility for states to opt-out is limited.

With respect to the interaction between the MLI and existing treaties, the MLI provides compatibility clauses. Further, an explanatory statement will be issued that will cover how the MLI interacts with existing bilateral treaties. The OECD will be the depository and will collect and make public notifications about the effect on existing treaties.

MLI likely would override the relevant parts of existing bilateral treaties. However, given the optionality in the MLI, this would require that participating countries and jurisdictions specify at the MLI's ratification which provisions of the MLI they would opt into and out of. With the help of notifications by such countries, the OECD would then carry out a matching exercise and publicize information on which clauses in which treaties have actually been modified.

However, India has maintained its stance of adopting globally accepted benchmarks where possible without compromising on its internal requirements where necessary by either continuing provisions that do not comply with the BEPS project and in fact, even implementing new ones, such as the recently introduced "Patent-Box" regime.

India's network of TIEAs with several jurisdictions including Bermuda, the Bahamas, Gibraltar and the Cayman Islands was expanded by the latest TIEA entered into with Switzerland in November 2016 giving India access to information from 2019 onwards. Information sharing under these TIEAs will commence in the coming years, increasing the ability of the taxman to crackdown on errant taxpayers and tax non-payers. The TIEAs are going to provide a major area of practice for professionals engaged in providing international tax and cross-border transactions related advisory and also open up the demand for professionals in this practice area. It would also provide an opportunity to professionals to travel abroad, both in order to understand and to advise on complex structures that were created earlier and subsequently come under the scanner due to information shared under the TIEAs.

While it is difficult to predict exactly what will happen next, it is certain that significant changes are imminent.