
CTC Study Circle

Tax Treaty Entitlement – PPT (Article 7 of MLI)

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Broad Overview of MLI – Treaty abuse

Treaty abuse - construct of MLI

MLI Article`	Coverage
1	Scope
2	Interpretation of terms
3 to 5	Hybrid mismatch arrangements
6 to 11	Treaty abuse
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Treaty Minim



Article 6 of MLI - Purpose of CTA

Article 6 of MLI: Purpose of CTA

▶ Para 1 of Article 6:

*“A Covered Tax Agreement **shall be modified to include the following preamble text:***

*“Intending to eliminate double taxation with respect to the taxes covered by this agreement **without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance** (including through **treaty-shopping arrangements** aimed at obtaining reliefs provided in this agreement for the **indirect benefit of residents of third jurisdictions**),”. ”*



Minimum Standard

▶ Para 3 of Article 6:

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



Optional Provision

▶ India has not notified / reserved any CTA under Article 6

- ▶ Minimum standard provision to apply
- ▶ MLI Preamble to be added to India's existing CTA
- ▶ Optional preamble text not opted for – would not apply



India's position

Article 6 of MLI: Purpose of CTA

- ▶ Reference to Treaty shopping specifically included in the Preamble:
“ .. Given the particular base erosion and profit shifting concerns arising from **treaty-shopping arrangements**, it was also decided to refer expressly to such arrangements **as one example of tax avoidance** that should not result from tax treaties, it being understood that this was only one example of tax avoidance that the Contracting States intend to prevent.”
(extract from para 16.1, page 93 of the Action 6 – Final Report)

Article 6 of MLI: Impact of Preamble

On certain India treaties:

- ▶ *Convention between India and Mauritius ..for the avoidance of double taxation and the **prevention of fiscal evasion** with respect to taxes on income and capital gains and for the **encouragement of mutual trade and investment***
 - ▶ (No change since Mauritius has not notified India as CTA)
- ▶ *Agreement between India and Singapore.. for the avoidance of double taxation and the **prevention of fiscal evasion** with respect to taxes on income*
 - ▶ (Preamble will get widened to include specific reference to treaty shopping)
- ▶ *Agreement between India and Russia ..desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and with a view **to promoting economic cooperation** between the two countries..*
 - ▶ (Preamble will get widened to include specific reference to treaty shopping and reference to economic development would continue as contained in the preamble in the existing treaty)

Article 6 of MLI: Impact of Preamble

India – UAE treaty:

- ▶ Preamble in existing India – UAE treaty

*The Government of the Republic of India and the Government of the United Arab Emirates desiring **to promote mutual economic relations** by concluding an Agreement for the avoidance of double taxation and the **prevention of fiscal evasion** with respect to taxes on income and on capital have agreed as follows :...*

- ▶ Preamble in synthesised version of India – UAE treaty

The following preamble text described in paragraph 1 of Article 6 of the MLI is included in the preamble of the Agreement:

ARTICLE 6 OF THE MLI - Purpose of a Covered Tax Agreement

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 the Agreement for the indirect benefit of residents of third jurisdictions)

Article 6 of MLI: Aid to interpretation of treaty

- ▶ Helps in proper interpretation and application of the treaty provisions
- ▶ Non-taxation or reduced taxation if in lines with the object and purpose of the treaty provisions
- ▶ Preamble as a guiding factor [Azadi Bachao Andolan (263 ITR 706)(SC)]
- ▶ Interpretation of a tax treaty based on its title and preamble is in accordance with the basic rule of interpretation of treaties
- ▶ Article 31 of the VCLT1 clearly states:
“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to terms of the treaty in their context and in the light of its object and purpose.”
- ▶ Article 31(2) - The context of the treaty includes its preamble

Article 7 of MLI - Principal Purpose Test

Article 7 of MLI: Principal Purpose Test

Dissecting PPT rule

Para 1 of Article 7:

- ▶ “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, (“reasonable purpose test”)
- ▶ 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

Article 7 of MLI: Principal Purpose Test

Dissecting PPT rule

“Benefit” covers all limitations on taxation imposed on the State of source, relief in Article 23, protection in Article 24 etc.

Broad interpretation of “Arrangement or transaction”

“One of the principal purposes”

“Reasonable to conclude”

Article 7 of MLI: Principal Purpose Test

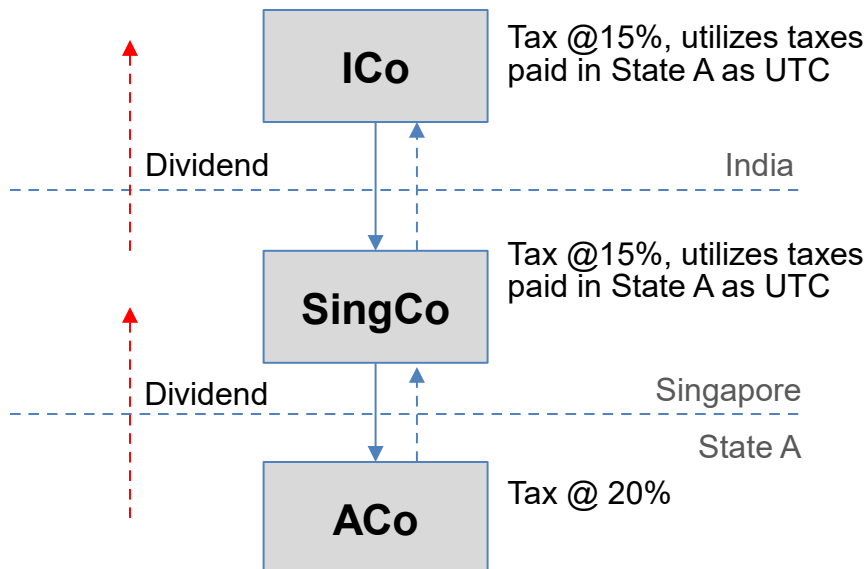
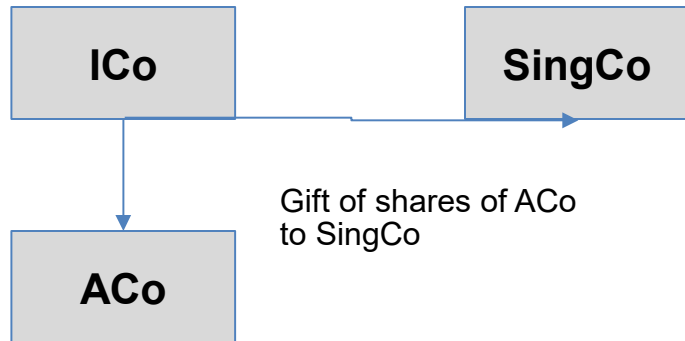
Dissecting PPT rule

“Benefit” covers all limitations on taxation imposed on the State of source, tax credits etc.

Example: tax reduction, exemption, deferral, tax refund, benefit of tax sparing, underlying tax credit etc.

Case Study: Benefit

UTC benefit

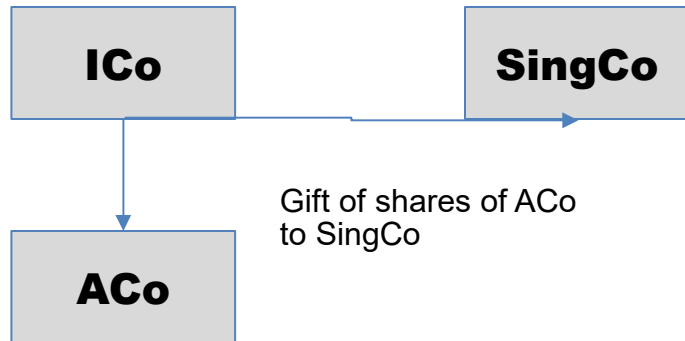


Facts:

- ▶ I Co, an Indian parent has a subsidiary ACo in State A which is regularly paying dividends
- ▶ India-State A Treaty does not have UTC clause
- ▶ Domestic law of State A has no withholding taxes on dividend income paid
- ▶ ICo gifts shares of ACo to SingCo¹ (Singapore based Investment Company having POEM in Singapore)
- ▶ The corporate tax rate in State A is 20% and Singapore is 15%
- ▶ The Treaty between State A-Singapore as well as India-Singapore Treaty has a UTC clause
- ▶ SingCo while paying corporate taxes in Singapore (15%), utilizes credit of the taxes paid in State A (20%) and pays no taxes in Singapore
- ▶ The dividend received from A Co is repatriated to I Co by S Co.

Case Study: Benefit

UTC benefit

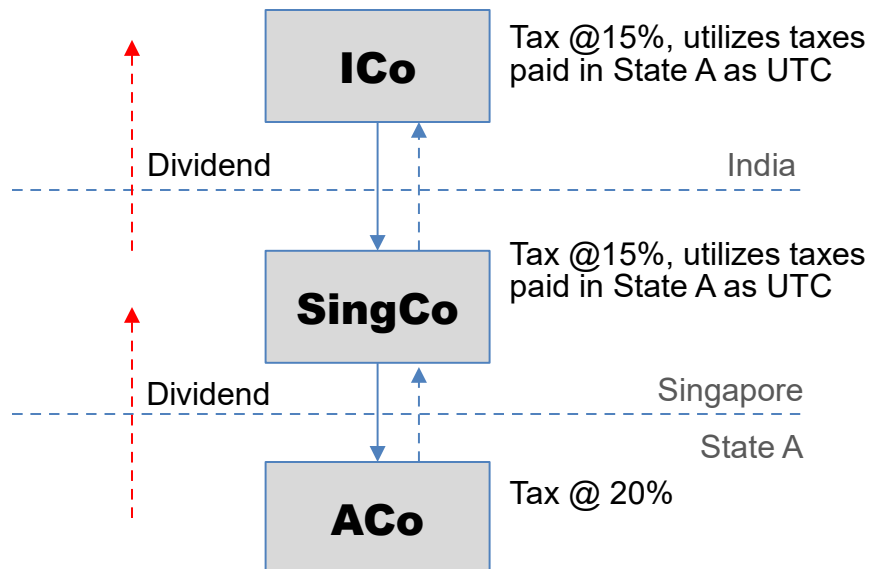


Facts:

- ▶ ICo claims credit of 15% corporate taxes paid in Singapore as per the UTC clause of India-Singapore Treaty with respect to tax levied under section 115BBD of the Act

Issues:

- ▶ Tax benefit for PPT is wide and extends to any form of relief (ie UTC, tax sparing, etc)
- ▶ From India perspective, the arrangement justification will require:
 - ▶ Why gift of shares?
 - ▶ Why a Singapore based entity?



Article 7 of MLI: Principal Purpose Test

Dissecting PPT rule

- ▶ “Arrangement or transaction” to be interpreted broadly
- ▶ “Arrangement” includes understanding, scheme, transaction or series of transactions whether or not legally enforceable. Also, includes “creation”, assignment, acquisition or transfer of income / asset
- ▶ It could be single step or a part of arrangement

Example: Steps are taken to ensure that meetings of the board of directors are held in a different country in order to claim that the company has changed its residence. One transaction alone may result in a benefit or it may operate in conjunction with a more elaborate series of transactions that together result in the benefit. In both the cases, PPT rule will apply.

Case Study: Arrangement

- ▶ Mr. X, a resident of India owns shares in an overseas company.
- ▶ Mr. X moves to Dubai in April 19 for the purposes of employment. He obtains TRC from Dubai tax authorities.
- ▶ Mr. X sells shares of the overseas company in FY 2019-20.

Issues for consideration

- ▶ Can he claim that capital gains arising on sale of shares in overseas company in FY 2019-20 not taxable in India?
- ▶ Can Indian tax authorities allege that the change of residence is an “arrangement”?
- ▶ What if Mr. X becomes resident of India in FY 2020-21?

Case Study: Arrangement

View 1:

- ▶ Mr. X has complied with all conditions necessary for claiming residential status of UAE.
- ▶ He is not resident of a third country taking benefit of a treaty between two contracting states –no treaty shopping.
- ▶ Mr. X has arranged his affairs in such a manner that he is required to pay less tax – Duke of Westminster
- ▶ Indian tax law does not have any provisions to levy tax on change of residence

View 2:

- ▶ Mr. X has arranged the affairs in an manner to avoid tax in India
- ▶ Avoidance of tax is one of the principal purposes behind change of residence and hence Article 7 should apply
- ▶ Para 9-12 of commentary in Article X – pages 57-58 of Action 6 Report

Notwithstanding, GAAR can be invoked

Article 7 of MLI: Principal Purpose Test

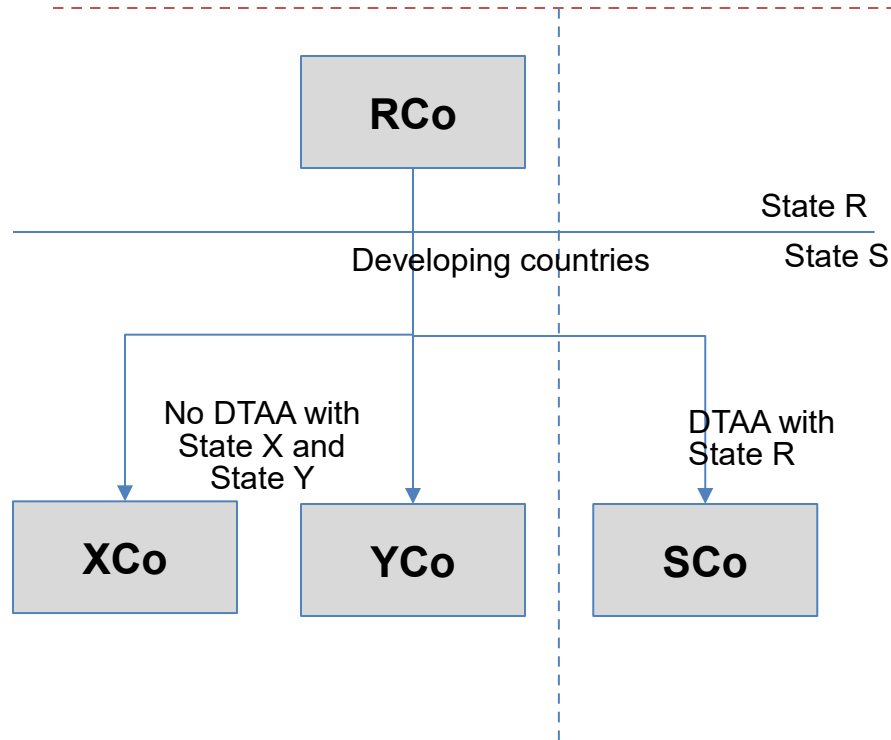
Dissecting PPT rule

“One of the principal purposes”

- ▶ Obtaining the benefit under a treaty need not be the sole or dominant purpose of a particular arrangement or transaction
- ▶ It is also “perceived” that obtaining treaty benefits is a reason for the transaction
- ▶ “... Where ... an arrangement is entered into for the purpose of obtaining similar benefits under a number of treaties, it should not be considered that obtaining benefits under other treaties will prevent obtaining one benefit under one treaty from being considered a principal purpose for the arrangement”

Article 7 of MLI: Principal Purpose Test

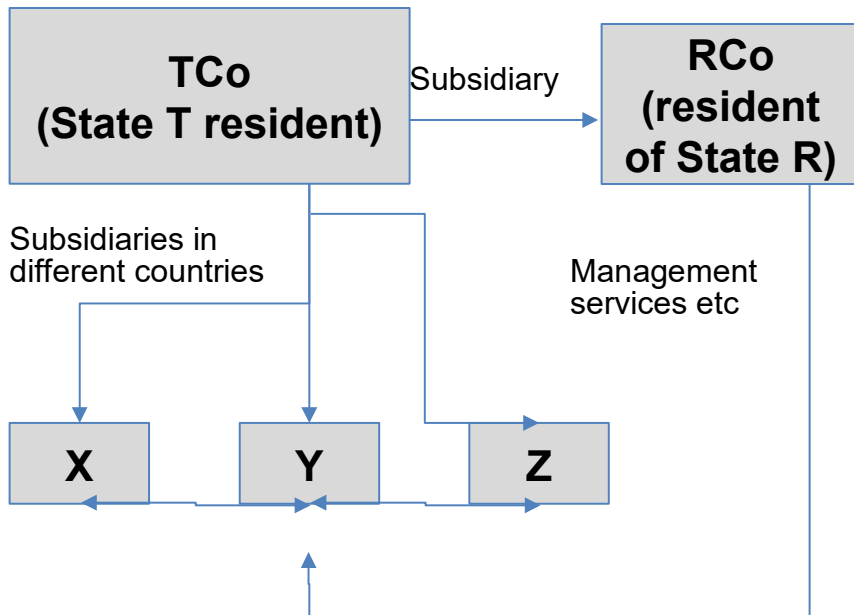
Example 1 on “one of the principal purposes”



- ▶ RCo Setting up a manufacturing facility in State S which was one of the three shortlisted locations for establishing manufacturing facility.
- ▶ All three locations were comparable economically and politically, however, presence of treaty with State S tilted the choice.
- ▶ Encouraging cross border investment and availing treaty benefit is one of object and purpose of the treaty with State S.
- ▶ Hence, though tax is one of the principal factors in decision making, treaty benefit is to be granted.

Article 7 of MLI: Principal Purpose Test

Example 2 on “one of the principal purposes”



- ▶ T Co establishes a regional company in State R for the purpose of providing managerial services to group companies.
- ▶ This decision is driven by skilled labour force, reliable legal system, business friendly environment, and comprehensive DTAA of State R which provide lower WHT rates in source countries
- ▶ Merely reviewing the effects of treaties on future payments by the subsidiaries to the regional company should not be considered to be the purposes for establishment of regional company.
- ▶ Treaty benefits should not be denied to regional company provided it makes decisions necessary for the conduct of its business, constitute a real business, exercises substantive economic functions, uses real assets and assumes real risks, and carries on the business through its own personnel.

Article 7 of MLI: Principal Purpose Test

Dissecting PPT rule

“Reasonable to conclude”

- ▶ PPT rule is triggered where “it is reasonable to conclude” that treaty motives were present
- ▶ Dictionary meaning of “reasonable”: having sound judgement, fair, sensible, appropriate, logical
- ▶ Tax authorities do not have to conclusively establish that obtaining a treaty benefit was one of the principal motives

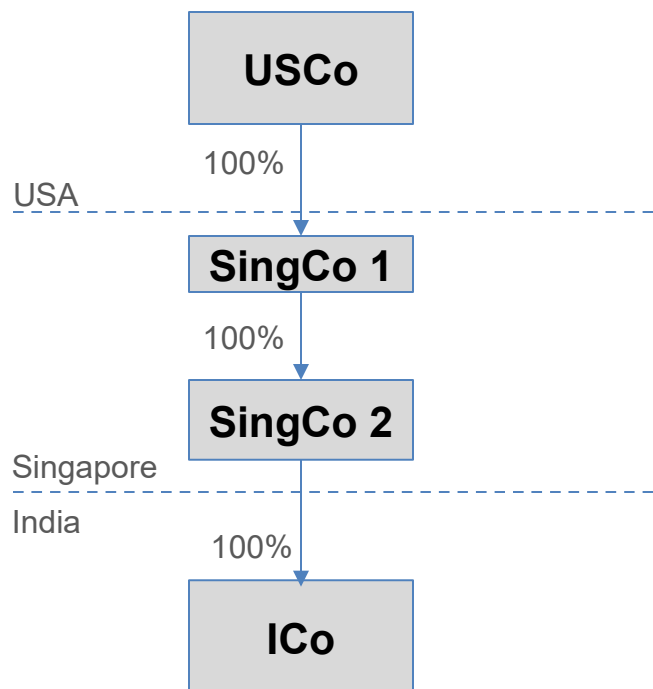
“Object and purpose carve out “

- ▶ Object of the relevant provision
- ▶ Example E in Action 6 report

Interplay of PPT with LOB

- ▶ Paras 3 to 5 of commentary on Para 7 – Action 6 BEPS Report – Page 55:
 - ▶ Paragraph 7 supplements and does not restrict in any way the scope or application of the provisions of paragraphs 1 to 6 (the limitation-on-benefits rule): ***a benefit that is denied in accordance with these paragraphs is not a “benefit under the Convention” that paragraph 7 would also deny.***

Case Study: LOB & PPT



Facts:

- ▶ USCo has 100% subsidiary SingCo1. SingCo has 100% subsidiary SingCo2. SingCo2 has 100% subsidiary ICo
- ▶ USCo and SingCo1 & 2 are residents of respective jurisdictions and they hold valid TRC.
- ▶ SingCo 1 & 2 satisfy LOB test provided under India-Singapore treaty
- ▶ SingCo1 sells shares of SingCo2 to a non-resident company

Issues:

- ▶ Can the tax officer deny treaty benefit on account of ownership criteria in a case where LOB test is satisfied?

Commentary:

- ▶ Para 5: As long as that company is a “qualified person” as defined in paragraph 2, it is clear that the **benefits of the Convention should not be denied solely on the basis of the ownership structure** of that company, e.g. because a majority of the shareholders in that company are not residents of the same State.

GAAR & PPT – Interplay

Interplay of domestic GAAR and PPT

Domestic GAAR

- ▶ **The main purpose** of tax benefit+ one of the tainted element
- ▶ Recharacterization of transaction, reallocation of income etc.
- ▶ Grandfathering available
- ▶ De-minimus threshold
- ▶ Administrative safeguards

PPT

- ▶ **One of the principal purpose** is tax benefit
- ▶ Denial of treaty benefit
- ▶ No Grandfathering
- ▶ No De-minimus
- ▶ No Administrative safeguards (can be determined by States)

- To be strictly interpreted
- Both can apply to an arrangement
- Choice Principle?

Access to treaty – bumpy road ahead



PPT – Future of tax planning

PPT & Tax Planning – Co-existence?

- ▶ Days of Tax Planning based on mere technicalities – no longer sustainable
- ▶ Planning with the primary objective of Tax Mitigation - difficult to sustain
- ▶ Decisions : driven by business objectives; Key driver Not Tax
- ▶ Business Purpose, Commercial Rationale, Substance - of paramount importance
- ▶ *Main Purpose of the Transaction, Arrangement, Scheme should not be Tax*
 - ▶ “Purpose” as distinguished from “Consequence”?
- ▶ While achieving a Business Objective & Purpose – need for Tax Planning may well be required
- ▶ Holistic Advise; Integrated Business Solutions

PPT & Tax Planning – Documentation

Documentation

- ▶ Ability to demonstrate Main Purpose/Substance of critical importance
- ▶ Taxpayer to be equipped to demonstrate real Intent, Motive, Purpose
- ▶ Robust Documentation - capturing main purpose, commercial rationale, context
- ▶ Relevant documents could include:
 - ▶ Board papers – Board minutes / resolutions / agenda / notes / presentations
 - ▶ Agreements / Scheme of Arrangements (preamble clause etc.)
 - ▶ Communications, Emails
 - ▶ Expert opinions, Professional advice, recommendations etc.

PPT impact – Withholding tax obligation

WHT obligation and vicarious liability of the payer

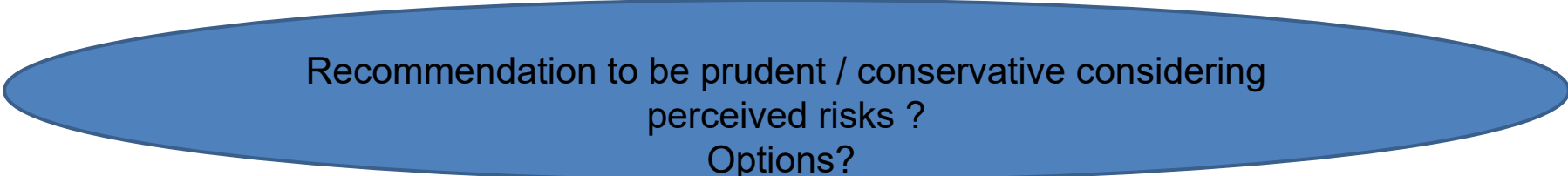
Would PPT impact require consideration while complying with WHT obligation?

View 1 – Impact of PPT not to be considered

- ▶ Anti-abuse provisions - to be invoked by the tax authorities
- ▶ Does law place onus on Buyer to apply PPT?
- ▶ Is seller bound by the views of Buyer?
- ▶ Not practical for buyer / impossibility of performance – access to details, independent verification, extent of verification?

View 2 – Impact of PPT to be considered

- ▶ Prima facie, obligation on Buyer u/s 195 read with Sec 90 – whether treaty applies?
- ▶ Potential consequences u/s 201 (assessee in default), disallowance of expense, 163 (rep. assessee), penalty, etc.
- ▶ Shome Committee report on GAAR (para 3.23)



Recommendation to be prudent / conservative considering
perceived risks ?
Options?

WHT obligation and vicarious liability of the payer- options

Expert Opinion



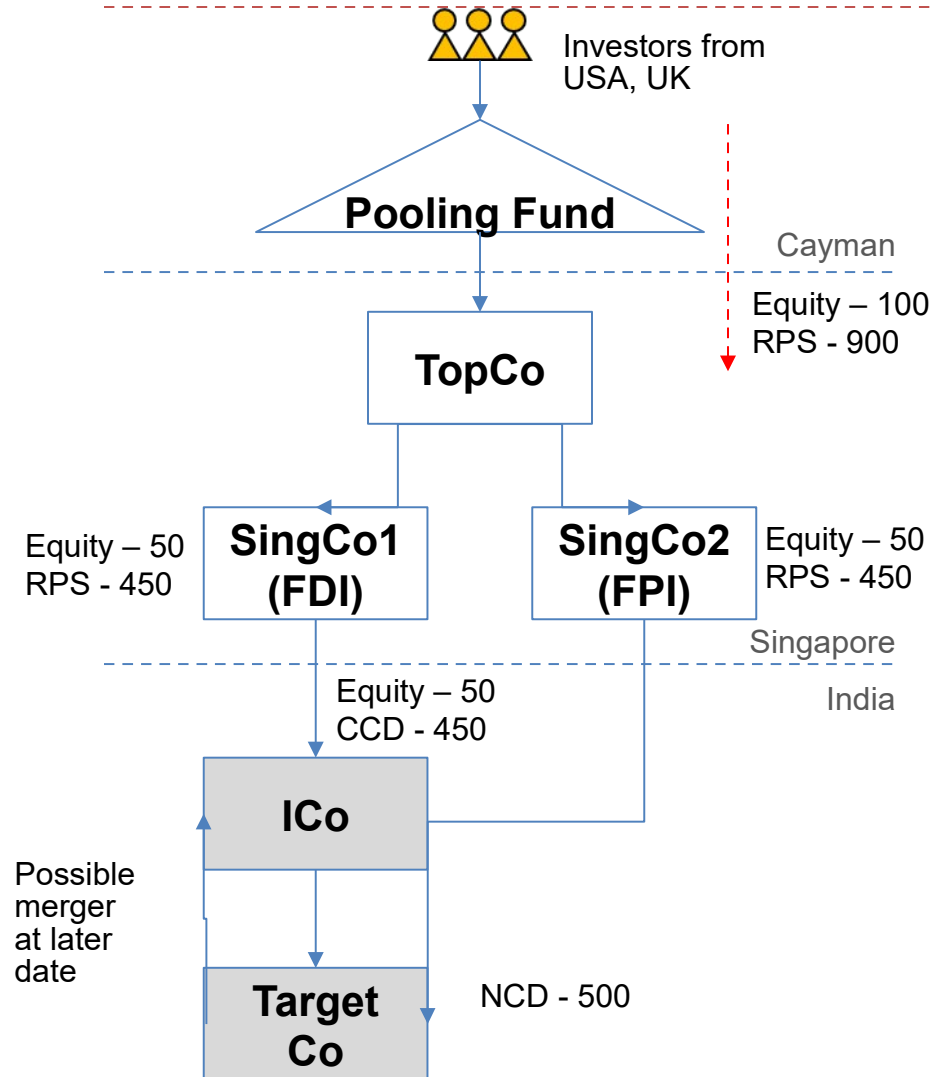
Impact on Indian tax treaties – some illustrations

Impact on India-Singapore tax treaty*

- ▶ Both India and Singapore have notified I-S treaty
- ▶ India has notified PPT (as interim measure) + simplified LOB
- ▶ Singapore has notified only PPT
- ▶ Only PPT should apply (symmetric / asymmetric application of simplified LOB not notified)
- ▶ Existing CTA contains SAAR in relation to capital gains income on sale of shares
- ▶ SAAR provisions not impacted by PPT
- ▶ To claim I-S treaty benefit (PPT + existing SAAR contained in CTA may need to be satisfied)

*entry into effect is 1st April 2020

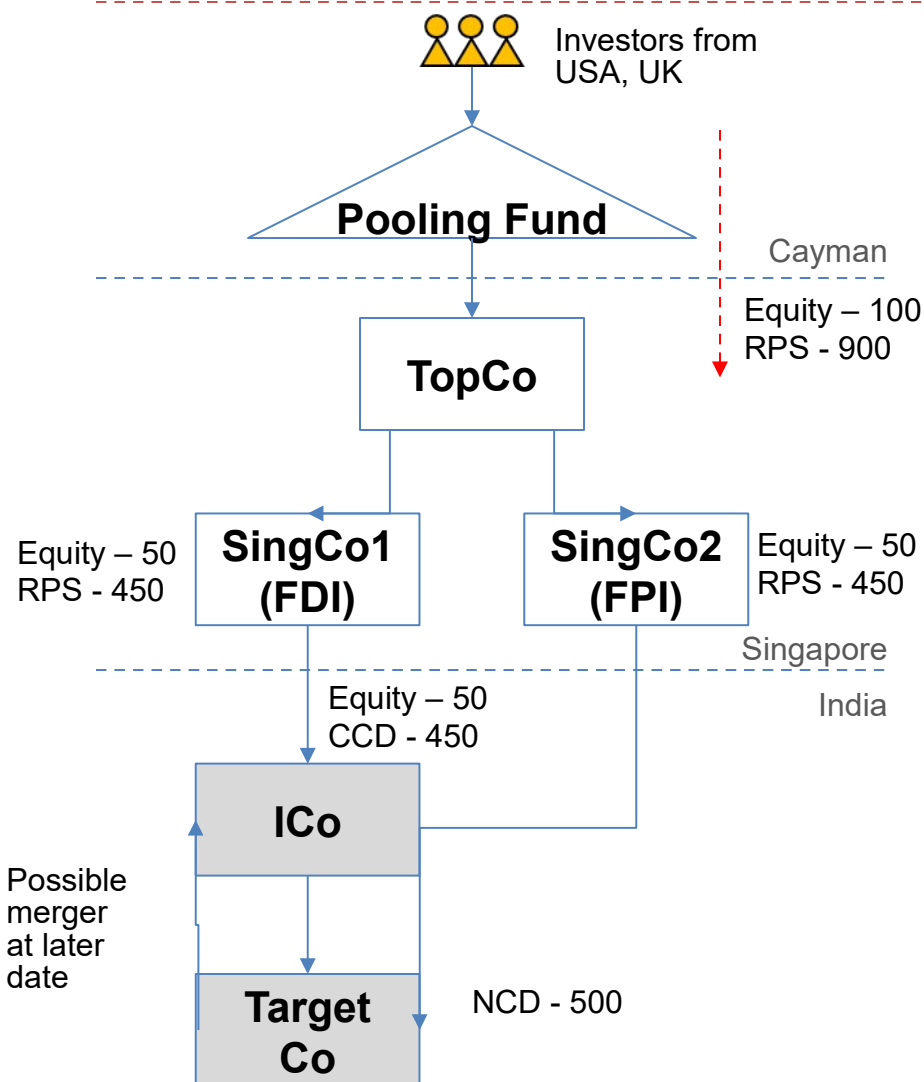
Case Study 1: Fund structure



Facts:

- ▶ Pooling fund is organised in Cayman (non-treaty jurisdiction), whose investors are from USA, UK
- ▶ The fund sets-up three entities in Singapore viz. TopCo, SingCo1 and SingCo2
- ▶ Pooling Fund invests 100% in TopCo: Large part of investment in form of RPS (90) to facilitate easy upstreaming of surplus to the Fund
- ▶ TopCo has likewise funded SingCo1 and SingCo2 in the form of Equity and RPS (10:90)
- ▶ SingCo1 infuses Equity (50) and CCD (450) in ICo which acquires TargetCo
- ▶ SingCo2 obtains FPI registration and invests in NCDs (500) of TargetCo for future expansion
- ▶ ICo and TargetCo pay ALP interest on CCD and NCD, respectively

Case Study 1: Fund structure



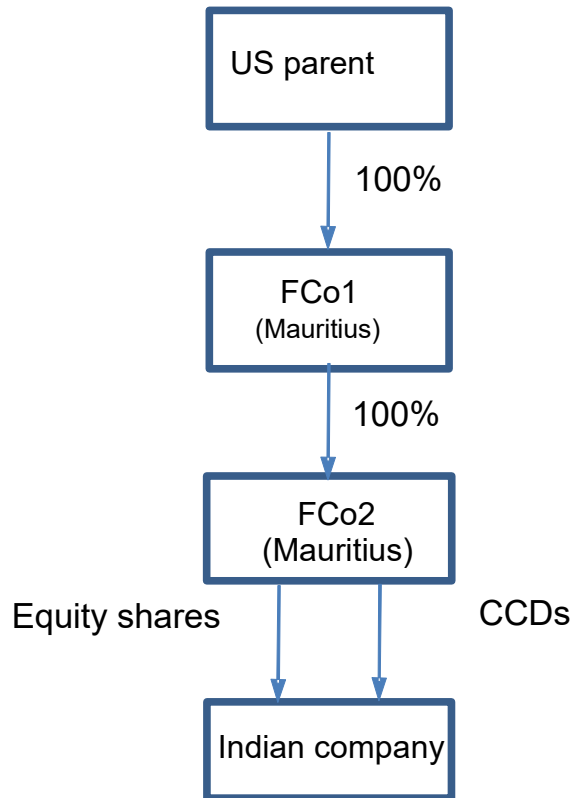
Facts:

- ▶ Illustrative features of CCD:
 - ▶ Not a secured debt
 - ▶ Interest is profit contingent ie no interest payable if there are no profits
 - ▶ Compulsion to convert on bankruptcy or liquidation
 - ▶ Debt is senior only to equity shareholders

Issues:

- ▶ Treaty entitlement for Singapore entities:
 - ▶ In respect of WHT on interest on CCDs (ie 15% as against 40% under domestic law)
 - ▶ In respect of capital gains on transfer of CCD
 - ▶ In respect of indirect transfer by TopCo

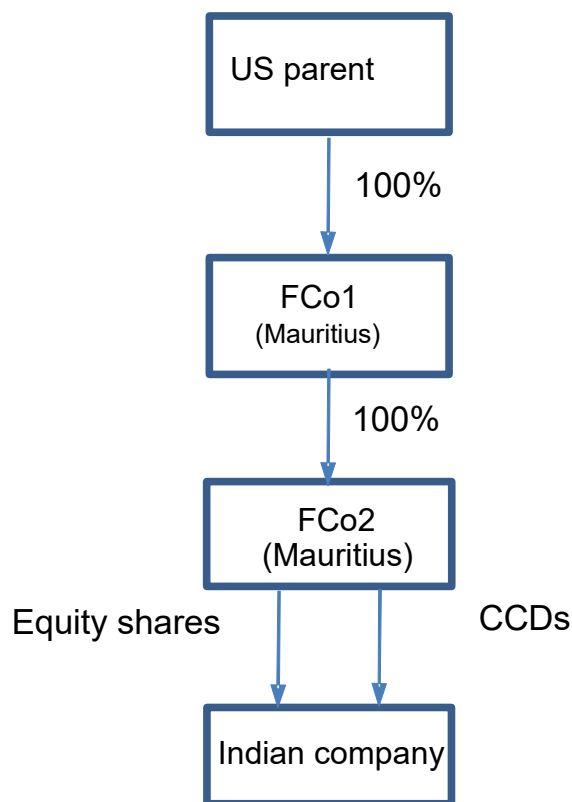
Case Study 2:



Facts:

- ▶ FCo1 and FCo2 are companies incorporated in Mauritius. FCo1 and FCo2 are tax residents of Mauritius as per its domestic law. FCo1 and FCo2 hold valid tax residency certificates (TRC) from the Mauritius tax authorities. FCo1 and FCo2 have POEM in Mauritius. Both qualify to be non-resident under the domestic Act of India
- ▶ FCo1 is a wholly owned subsidiary of a US Company
- ▶ FCo1 is the sole shareholder of FCo2
- ▶ FCo2 had acquired equity shares and Compulsorily Convertible Debentures (CCDs) of an Indian company prior to 1 April 2017. It has also invested in equity shares and CCDs of the Indian company after 1 April 2017. These investments have been held as 'capital assets'. FCo2 has no assets other than these investments in the Indian company
- ▶ FCo2 proposes to sell its stake in the equity shares and CCDs of the Indian company
- ▶ Mauritius has not included I-M treaty in its notification

Case Study 2:

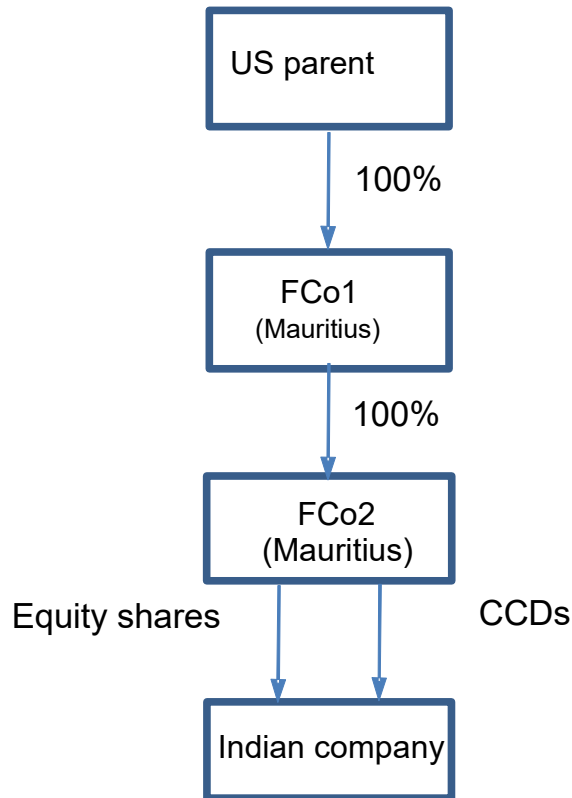


Alternative scenarios:

- ▶ **Scenario 1:** Mauritius has not notified the I-M treaty as CTA. There are no amendments to the I-M treaty vide bilateral negotiations.
- ▶ **Scenario 2:** Mauritius and India bilaterally amend the I-M treaty to adopt provisions similar to the relevant MLI provisions) and agree to include the Preamble text and a 'Principal Purpose Test' ('PPT') in the I-M treaty.
- ▶ **Scenario 3:** Mauritius and India bilaterally amend the I-M treaty to adopt provisions similar to the relevant MLI provisions and agree to include the Preamble text and a PPT in the treaty. They also however agree to exclude capital gains on sale of *investment* acquired before 1 April 2017 in a company resident in a contracting state, from the purview of the PPT. Accordingly, in addition to the Preamble text and PPT text as mentioned above, following is included:

"However, the provisions of the aforesaid paragraph will not apply to gains from the alienation of investments acquired prior to 1 April 2017 in a company which is resident of a Contracting State."

Case Study 2:



Issues for consideration:

- ▶ Capital gains tax implications in India for the various investments in the hands of FCo2?
- ▶ Capital gains tax implications in India arising to FCo1 on the sale of shares of FCo2?
- ▶ Tax implications in India as regard the interest on CCDs in the hands of FCo2?

Issue 1 – Capital gains tax implications in the hands of FCo2

Scenario 1 : No amendments to the I-M treaty.

Shares acquired before 1 April 2017

- ▶ Article 13(4) of the I-M treaty – not taxable (Annexure 1)
- ▶ CBDT Circular No. 789 dated 13-4-2000 (Annexure 2)
- ▶ Supreme Court judgement in *Union of India v Azadi Bachao Andolan* (2003) 263 ITR 706 (SC)
- ▶ Judgements of various High Court¹
- ▶ I-M treaty not affected by MLI changes

¹Serco BPO (P.) Ltd. v. Authority for Advance Rulings [2015] 379 ITR 256 (Punjab & Haryana)
JSH Mauritius Ltd. (Writ Petition 3070 of 2016)- Bombay High Court etc.

Issue 1 – Capital gains tax implications in the hands of FCo2

Scenario 2 : Mauritius and India both bilaterally amend the I-M treaty to adopt provisions similar to relevant MLI provisions

Shares acquired before 1 April 2017

View 1 - PPT should not apply / fall in carve out provision

- ▶ Article 13(3A) read with Article 13(4) introduced with the purpose of grandfathering the past investments
- ▶ BEPS agenda on PPT was known at the time of signing the Protocol, still past investments were grandfathered
- ▶ Grandfathering provisions are introduced for ensuring smooth transition from residence based taxation to source based taxation (interview of Jt Secy, Ministry of Finance, GOI)
- ▶ CBDT Circular 789 not yet withdrawn
- ▶ Grandfathering under I-M treaty aligned with domestic GAAR provisions.
- ▶ Policy decision of not taxing capital gains on shares acquired prior to 1st April 2017

View 2 - PPT should apply

- ▶ The treaty provisions as they stand at the time the income is earned (and treaty benefits are availed) should apply
- ▶ Mauritius and India as participants of BEPS agenda have committed to insertion of PPT for addressing treaty abuse
- ▶ Fulfilment of objective condition (Article 13(4)) cannot negate the applicability of PPT (agreed minimum standard)

Issue 1 – Capital gains tax implications in the hands of FCo2

Scenario 3 : Mauritius and India bilaterally include the Preamble text and a PPT, excluding capital gains on sale of investment acquired before 1 April 2017 from the purview of the PPT

Shares acquired before 1 April 2017

- ▶ Gains not taxable

For Issue 1 (transfer of shares acq. post 1 April 2017, CCD), Issue 2 and Issue 3 – all scenarios

	Scenario 1	Scenario 2	Scenario 3
Shares acquired on or after 1.4.2017	▶ Capital gains taxable		
CCD acquired before 1.4.2017	▶ Gains not taxable	▶ Should PPT apply?	▶ Gains not taxable
CCD acquired after 1.4.2017	▶ Gains not taxable	▶ PPT to apply	▶ PPT to apply
Capital gains to F Co 1 on sale of shares as F Co2	▶ Same implications as CCD		
Interest on CCD in the hands of F Co 2	▶ 7.5% should apply	▶ PPT to apply	▶ PPT to apply

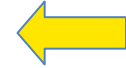
Annexure 1 – Article 13 of the I-M treaty



ARTICLE 13 CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
[3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.
3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;]
[4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident.]
5. For the purposes of this article, the term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

Annexure 2 – CBDT circular no. 789



734. Clarification regarding taxation of income from dividends and capital gains under the Indo-Mauritius Double Tax Avoidance Convention (DTAC)

- 1.** The provisions of the Indo-Mauritius DTAC of 1983 apply to 'residents' of both India and Mauritius. Article 4 of the DTAC defines a resident of one State to mean "any person who, under the laws of that State is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature." Foreign Institutional Investors and other investment funds, etc., which are operating from Mauritius are invariably incorporated in that country. These entities are 'liable to tax' under the Mauritius Tax law and are, therefore, to be considered as residents of Mauritius in accordance with the DTAC.
- 2.** Prior to 1-6-1997, dividends distributed by domestic companies were taxable in the hands of the shareholder and tax was deductible at source under the Income-tax Act, 1961. Under the DTAC, tax was deductible at source on the gross dividend paid out at the rate of 5% or 15% depending upon the extent of shareholding of the Mauritius resident. Under the Income-tax Act, 1961, tax was deductible at source at the rates specified under section 115A, etc. Doubts have been raised regarding the taxation of dividends in the hands of investors from Mauritius. It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.
- 3.** The test of residence mentioned above would also apply in respect of income from capital gains on sale of shares. Accordingly, FIIs, etc., which are resident in Mauritius would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of article 13.

Circular : No. 789, dated 13-4-2000.

Choice Principle



Extracts from CBDT circular 7 of 2017 dated 27 January 2017

“Question no 3: Will GAAR interplay with the right of the taxpayer to select or choose method of implementing a transaction?”


Answer: GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction “



162(2)

*Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal) , a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person **may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.***

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.



Bibliography

- ▶ MLI
- ▶ Explanatory statement to MLI
- ▶ India's MLI positions
- ▶ Action plan 6 report
- ▶ India – UAE synthesised text





Thank You

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