
Title: Analysis of Options and Notifications in the MLI with Reference to the Prevention of Treaty Abuse Article

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1. Introduction

The BEPS Action Plan has identified treaty abuse as one of the most important sources of BEPS concerns. OECD and non-OECD government tax treaty experts agree that changes to the model tax conventions, as well as the bilateral tax treaties based on the OECD model tax conventions, are required to stop or significantly reduce the treaty abuses.¹ On October 2015, the OECD published 15 final reports that documented a total of 15 action plans, including the Final Report “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances” under Action 6, and the Final Report “Developing a Multilateral Instrument to Modify Bilateral Tax Treaties” under Action 15. The output of the Action 15 Final Report is a piece of public international law, titled “the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting” (the Multilateral Instrument or the MLI for short).

The Action 15 Final Report recognized that the sheer number of bilateral treaties makes updates to the treaty network burdensome and time-consuming, limiting the efficiency of multilateral efforts. As a result, the current network is not well-synchronised with the model tax conventions. Since the actual treaties are many years behind the models on which they are based, any multilaterally-agreed changes to the models take a generation to implement.² This problem would become more severe if varied anti-BEPS measures were included in thousands of new bilateral protocols to current tax treaties the number of which exceeds 3,000. The MLI has brought about a step change to produce synchronised results that would save resources and improve the clarity of BEPS-related international tax treaty rules. The MLI operates to modify tax treaties between two or more Parties to the MLI. 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 (the CTA); instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.³

The objectives of the MLI are threefold:

- (1) to implement the treaty-related measures in order to close the loopholes of the tax treaties which have been developed in use for almost a century cannot cope with the challenges of globalization of the economy;
- (2) provide the appropriate flexibility in the level of commitment by the contracting jurisdictions in order to enable effective coordination to tackle BEPS while preserving State sovereignty in tax matters; and

¹ “Developing a Multilateral Instrument to Modify Bilateral Treaties, Action 15 – 2015 Final Report”, paragraph 4, page 15, OECD

² “Developing a Multilateral Instrument to Modify Bilateral Treaties, Action 15 – 2015 Final Report”, paragraph 5, page 15, OECD

³ See paragraph 13 of the Explanatory Statement to the Multilateral Instrument, OECD.

(3) ensure transparency and clarity for all stakeholders.

In this respect, the MLI can be examined from two aspects:

- i) the underlying legal doctrine including reciprocity and *lex posterior* based on the law of treaties as well as existing precedents in various fields of international law;⁴ and
- ii) the technicalities of the option and notification mechanisms to fulfil each of those objectives.

Article 7 of the MLI replicates Article 29 of the Model Tax Convention – Entitlement of Benefits. A contracting jurisdiction that adopts the prevention of treaty abuse article can satisfy one of the four minimum standards developed in the course of the OECD/G20 BEPS project.⁵ Article 7, which contains 3 opt-in provisions and 4 reservations, could best be used as an example to shed light on the underlying legal principles and the technical rules of the MLI. Conversely, with the knowledge obtained from the analysis of the legal principles in the MLI, the readers can better understand the crux of the prevention of treaty abuse article and the mechanism by which the options and notifications work to modify the application of MLI provisions to the CTA with respect to Article 7 in particular, and other Articles of the MLI in general.

In this paper, section I examines i) the opt-in provisions available in Article 7 for the parties to the MLI to make commitment in addition to the BEPS minimum standard with respect to the prevention of treaty abuse. Section II presents the overview of Article 7 including policy considerations. Section III examines the structure of Article 7, and the technical rules governing the interaction between the operative and the compatibility clauses. Section IV covers notifications and reservations (opt-out provisions). Section V deals with the application of the option rules in Article 7, and uses examples to show how the selected contracting jurisdictions apply the PPT provision and simplified limitation-of-benefit provision in Article 7 to the covered tax agreements, subject to the reservations made. Section VI is the conclusion.

Section 2 – Anti-Treaty Abuse Rules in the MLI

2.1. Action 6 – 2015 Final Report

The Action 6 – 2015 Final Report⁶ includes three options to address the situations of treaty abuse,⁷ which has been replicated in Article 7 of the Multilateral Instrument (the MLI). The

⁴ See the Vienna Convention on the Law of Treaties.

⁵ The 4 minimum standards are: Action 5, Harmful tax practice; Action 6, Preventing the granting of treaty benefits in inappropriate circumstances; Action 13, Transfer pricing documentation; Action 14, Improving dispute resolution mechanism.

⁶ “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”, Action 6 - 2015 Final Report, OECD

first of these alternatives is a general anti-abuse rule based on the principal purpose of transactions or arrangements. In addition to this principal purpose test (the PPT), the 2015 Final Report provides two versions (a simplified and detailed version) of a specific anti-abuse rule, the limitation on benefits (LOB) provision, which limits the availability of treaty benefits to persons that meet certain conditions.⁸ The 2015 Final Report states that countries, at a minimum, should implement:

- a PPT only;
- a PPT and either a simplified or detailed LOB provision (the PPT-SLOB or PPT-DLOB, (denoted as "PPT-plus")); or
- a detailed LOB provision, supplemented by a mechanism either that would deal with conduit arrangements not already dealt with in tax treaties or a PPT (the DLOB-conduit-structure or DLOB-and-PPT (denoted as "DLOB-plus")).

2.2. Changes to OECD Model Tax Convention

After the publication of the Action 6 - 2015 Final Report (the action 6 report), the OECD has included the minimum standard with respect to the prevention of treaty abuse in Article 29 – “Entitlement to Benefits” - of the 2017 update on the Model Tax Convention (the Convention). The footnote to Article 29 elaborates that

“[t]he drafting of this Article [Article 29 of the Convention] will depend on how the Contracting States decide to implement their common intention, reflected in the preamble of the Convention and incorporated in the minimum standard agreed to as part of the OECD/G20 Base Erosion and Profit Shifting Project, to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements.”

“This may be done either through the adoption of paragraph 9 (the PPT provision) only, through the adoption of the detailed version of paragraphs 1 to 7 (the simplified limitation of benefit provision) that is described in the Commentary on Article 29 together with the implementation of an anti-conduit mechanism as described in paragraph 187 of that Commentary, or through the adoption of paragraph 9 (the PPT provision) together with any variation of paragraphs 1 to 7 (the simplified limitation of benefit provision) described in the Commentary on Article 29.” (Parentheses and brackets added.)

2.3. Articles in the MLI

⁷ See paragraphs 88 and 89 of the Explanatory Statement to the MLI.

⁸ These conditions are replicated by Article 7 under one or more categorized tests listed in paragraphs 9 to 13.

The preamble language of the Model Tax Convention has been replicated in Article 6 of the MLI – Purpose of a Covered Tax Agreement. Both Article 6 and Article 7 of the MLI, taken together, fall under the scope of one of the minimum standards as documented in the Action 6 Final Report entitled “Preventing the Granting of Tax Benefits in Inappropriate Circumstance”. The parties to the MLI must adopt all the minimum standards to the CTAs including Article 6 and Article 7, and the implementation of the minimum standards is subject to a monitoring mechanism of peer reviews, as provided under the Inclusive Framework on BEPS.⁹ Those articles of the MLI that are not subject to peer review do not come under the scope of the minimum standards. -

Paragraph 1 of Article 6 – Purpose of a Covered Tax Agreement – of the MLI reads:

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)”.

The detailed texts of article 7 are analysed in sections 3 to 7 below.

Section 3 - Options

The MLI has three types of options: opt-out provisions (reservations), opt-in provisions and alternative provisions. Article 7 of the multilateral instrument (the MLI) contains the first and the second type of options.

3.1.1. Opt-in Provision under Article 7(4)

Opt-in provisions supplement the application of a primary operative clause. The first example is Article 7(4) (“Prevention of Treaty Abuse”). Article 7(3) provides that a party that has not made the reservation for Article 7(1), - that is, the party has not opted out of the principal purpose test (PPT) - may choose to apply paragraph 4 to supplement its application of paragraph 1 to its covered tax agreements (the CTAs).¹⁰ A party to the MLI could adopt the PPT in article 7(1) alone

⁹ Members of the Inclusive Framework will develop a monitoring process for the four minimum standards as well as put in place the review mechanisms for other elements of the BEPS Package. The monitoring of the four minimum standards will ensure that all members, as well as jurisdictions of relevance, will comply with the standards in order to ensure a level playing field. See more on <http://www.oecd.org/tax/beps/beps-about.htm#monitoring>.

¹⁰ A party is the signatory to the MLI that has deposited to the OECD Depository the instrument of ratification, acceptance or approval. Before a jurisdiction becomes a party (contracting jurisdiction) to the MLI, the

if it does not wish to opt in for article 7(4). If a party opts in for article 7(4), Article 7(1), as modified by article 7(4), shall apply in circumstances if, upon request from the taxpayer and after considering the relevant facts, the competent authority determines that the benefit could have been granted in the absence of the transaction or arrangement resulting in the denial of benefit. Article 7(1) and Article 7(4) provide, as below:

1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

4. Where a benefit under a Covered Tax Agreement is denied to a person under provisions of the Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits, the competent authority of the Contracting Jurisdiction that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement.

3.1.2. Request for Tax Benefit

Both paragraph 4 of Article 7 (prevention of treaty abuse) and paragraph 1 of Article 16 (mutual agreement procedure) are taxpayer-friendly provisions, and both contain the provision providing a remedy that the taxpayer can request the competent authorities of the contracting jurisdiction of which he is a resident, to reconsider his case after the tax benefits have been denied. However, the provisions in the articles 7(4) and 16(1) are different in the following areas:

jurisdiction can submit a provisional list of reservation and notification at the time of signature, pursuant to Article 28(7) of the MLI.

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- If the contracting jurisdiction does not choose to adopt Article 7(4), the taxpayer cannot proceed to make such a request. In contrast, the taxpayer access to MAP under Article 16(1) is not optional and is provided by the MLI article that the contracting jurisdictions must adopt;¹¹
 - Article 16(1) provides that the taxpayer must present his case within a period not exceeding three years from the first notification of the action resulting in taxation not in terms of the CTA provisions. Article 7(4) does not provide such a time period. Instead, it is determined by the domestic rules of the contracting jurisdiction;¹²
 - Article 16(1) grants the taxpayer a benefit conditioned upon an agreement reached between the competent authorities of two contracting jurisdiction while Article 7(4) is a discretionary benefit conditioned upon the unilateral action of one single competent authority;¹³

3.1.3. Instance of granting discretionary benefit under Article 7(4)

The competent authority of the contracting jurisdiction that chooses to adopt the SLOB option will grant tax exemptions to a retirement fund if it satisfies the requirement of a “qualified person” under paragraphs 9(d) and (e) of Article 7.¹⁴ In contrast, the competent authority of the contracting jurisdiction that only adopts the PPT option may deny the tax benefit on grounds that the retirement fund is an arrangement that does not have a residence status even though all of the beneficial owners of the fund could be the residents of either contracting jurisdiction to the CTA. To address

¹¹ See paragraph 1 of Article 16 – Improving Dispute Resolution.

¹² See paragraph 1 of Article 16 – Improving Dispute Resolution.

¹³ See paragraph 2 of Article 16 – Improving Dispute Resolution.

¹⁴ Paragraph 9 of Article 7 provides that:

“9. A resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be a qualified person at a time when a benefit would otherwise be accorded by the Covered Tax Agreement if, at that time, the resident is:

- a) an individual;
- b) that Contracting Jurisdiction, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting Jurisdiction, political subdivision or local authority;
- c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- d) a person, other than an individual, that:
 - i) is a non-profit organisation of a type that is agreed to by the Contracting Jurisdictions through an exchange of diplomatic notes; or
 - ii) is an entity or arrangement established in that Contracting Jurisdiction that is treated as a separate person under the taxation laws of that Contracting Jurisdiction and:
 - A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting Jurisdiction or one of its political subdivisions or local authorities; or
 - B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision A);
- e) a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit would otherwise be accorded, persons who are residents of that Contracting Jurisdiction and that are entitled to benefits of the Covered Tax Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.”

the possible resulting injustice, a party that adopts the PPT-only option may choose to adopt the opt-in provision under Article 7(4), which provides that the competent authority may grant the tax benefit to the retirement fund if, upon request from the retirement fund and after considering the relevant facts, it makes an administrative determination that the tax benefits could have been granted if the beneficial owners had made direct investment in the assets instead of doing so through the retirement fund.

3.1.4. Opt-in Provisions under Article 7(6) and 7(7)

The second and third examples of opt-in provisions are Article 7(6) and Article 7(7). Where a contracting jurisdiction chooses to adopt the simplified limitation of benefit provision (the SLOB provision) in addition to the PPT article, it may opt-in for articles 7(6) or 7(7), whose texts are given below:

“6. A Party may also choose to apply the provisions contained in paragraphs 8 through 13 (hereinafter referred to as the “Simplified Limitation on Benefits Provision”) to its Covered Tax Agreements by making the notification described in subparagraph c) of paragraph 17 (Article 7(17)(c)). The Simplified Limitation on Benefits Provision shall apply with respect to a Covered Tax Agreement *only where* all Contracting Jurisdictions have chosen to apply it.” [Emphasis added.]

“7. In cases where some but not all of the Contracting Jurisdictions to a Covered Tax Agreement choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, then, notwithstanding the provisions of that paragraph, the Simplified Limitation on Benefits Provision shall apply with respect to the granting of benefits under the Covered Tax Agreement:

a) *by all Contracting Jurisdictions*, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly; or

b) *only by the Contracting Jurisdictions that choose to apply the Simplified Limitation on Benefits Provision*, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly.” [Emphasis added.]

3.1.5. Asymmetry resulting from choosing the SLOB provision

It is noted that some of the contracting jurisdictions may not adopt the SLOB option because choosing the PPT alone is sufficient to meet the BEPS minimum standard. The asymmetry in the choice of options, if Article 7(6) is chosen, will be at odds with the principle of reciprocity and may result in the SLOB provision, or the entire Article 7 under certain conditions, not being applicable to the CTAs for those contracting jurisdictions. Article 7(7) provides an option to address the asymmetry if all of the parties not choosing the SLOB agree that either i) all parties adopt the SLOB when granting the tax benefit under the CTA, pursuant to Article 7(7)(a), or ii) only the parties choosing SLOB adopt the SLOB when granting the tax benefit, pursuant to Article 7(7)(b). In the absence of any agreement reached pursuant to Article 7(7)(a) or 7(7)(b), the party who chooses to adopt the SLOB can opt out of the entire Article 7. In that case, the parties shall endeavour to reach a mutually satisfactory solution which meets the BEPS minimum standard as mentioned above, pursuant to Article 7(16).

3.2. Comparing PPT and Simplified Limitation of Benefit provisions

3.2.1. Policy consideration

As explained above, a party to the MLI may opt-in for the simplified limitation of benefit provision (the SLOB provision) under Article 7(6). A SLOB provision is effective as a specific anti-abuse rule aimed at treaty shopping situations that can be identified on the basis of criteria based on legal nature, ownership in and general activities of, certain entities. However, the SLOB rule only focuses on treaty shopping and does not address other forms of treaty abuse, including conduit financing arrangement. The PPT provision, which is wider in scope than the LOB rule, has been introduced to counter treaty shopping in respect of a conduit structure, but due to its arbitrary nature it is less objective in application than the SLOB provision and it might cause injustice under certain circumstances. In view of the above shortcomings, contracting jurisdictions are free to decide whether they can opt-in for the SLOB provision under Article 7(4) to address the injustice resulting from the application of PPT provision under Article 7(1).

The Explanatory Statement to the MLI further provides that, as the default option,¹⁵ the PPT in Article 7(1) is the only approach that can satisfy the minimum standard on its own. Parties are then permitted pursuant to Article 7(6) to supplement the PPT by choosing to apply a SLOB provision. As noted, the MLI does not provide the details of the detailed limitation of benefits provision (DLOB), and the contracting jurisdictions that adopt the DLOB should endeavour to

¹⁵ Article 23 – Types of Arbitration Process also provides for the "final offer" approach as the default option, as compared to the independent opinion approach. See paragraph 241, Explanatory Statement to the MLI.

reach a mutually satisfactory solution that meets the minimum standard.¹⁶ Note also that the situation of asymmetry in choice of options may arise in which a party only adopts the PPT provision while the other party chooses to adopt the SLOB provisions in addition to the PPT default option. The issue about the asymmetry in the choice of options will be dealt with in what follows in this article.

3.2.2. Gaps in limitation of benefit option

The fact that a person is entitled to benefits under the SLOB provision does not mean that these benefits cannot be denied under the PPT rules. SLOB provisions are rules that focus primarily on the legal nature, ownership in, and general activities of, residents of a Contracting State. Assume, for instance, that a public company whose shares are regularly traded on a recognised stock exchange in the Contracting State of which the company is a resident derives income from the other Contracting State. As long as that company is a “qualified person” as defined in SLOB rules, 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. The fact that such a company is a qualified person does not mean, however, that benefits could not be denied under the PPT provision for reasons that are unrelated to the ownership of the shares of that company. Assume, for instance, that such a public company is a bank that enters into a conduit financing arrangement intended to provide indirectly to a resident of a third State the benefit of lower source taxation under a tax treaty.¹⁷

3.2.3. Preference to PPT option

It appears that most contracting jurisdictions opt-in for the PPT provision.¹⁸ The reason for the policy makers to choose the PPT option is that the scope of tax benefits granted under the PPT option in Article 7(1) is larger than that under Article 7(6), which does not deal with the benefits under Article 4(3) – dual residence, Article 9(2) – a corresponding adjustment following an initial adjustment by the other contracting jurisdiction, and Article 24 – non-discrimination.¹⁹

¹⁶ The detailed version of limitation of benefit rules is contained in the Commentary on Article 29 of the update on the Model Tax Convention, and the implementation of an anti-conduit mechanism is included in paragraph 187 of that Commentary.

¹⁷ See paragraphs 4 and 5 under the heading of Commentary in pages 55-56 of “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report.

¹⁸ As of 28th June 2019, out of a total of 29 contracting jurisdictions that had confirmed the MLI position, only three of them, India, Russia and Slovak Republic opted for the simplified limitation of benefit option, according to the information of the OECD Depository. See <http://www.oecd.org/tax/treaties/mli-database-matrix-options-and-reservations.htm>.

¹⁹ See Article 7(8)(a) to Article (8)(c) of the MLI.

3.2.4. Policy choices

The limitation of benefit (LOB) rule limits the availability of treaty benefits to entities that meet certain conditions which are based on the legal nature, ownership in, and general activities of the entity. As a specific anti-abuse rule, the SLOB seeks to ensure that there is a link between the entity and its state of residence. Such LOB provisions are found in treaties concluded by a few contracting jurisdictions and have proven to be effective in preventing many forms of treaty shopping strategies.²⁰ However, the LOB rules may not be effective in preventing other forms of treaty shopping. In view of the fact that each of the LOB and PPT rules has strengths and weaknesses and may not be appropriate for, or accord with the treaty policy of, all countries. Also, the domestic law of some contracting jurisdictions may include provisions that make it unnecessary to combine those two rules to prevent treaty shopping. What is needed is not only a choice of effective tools for preventing treaty abuse, but also a policy choice of the individual contracting jurisdiction the policy goal of which can be meeting the BEPS minimum standards for the prevention of treaty abuse or in furtherance of its commitment to the BEPS recommendations and best practices.

Section 4 – Structure and Technical rules

4.1. Legal Structure of Article 7

Articles 3 to 17 under Part II to V of the Multilateral Convention to Implement Tax Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), signed by over 70 countries or jurisdictions on 7 June 2017²¹ and by 89 countries or jurisdictions as of 28th June 2019,²² are substantive provisions addressing the BEPS issues. The substantive provisions have the following common structure: (i) operative clauses, (ii) compatibility clauses, (iii) reservation clauses, and (iv) notification clauses.

This MLI structure is also replicable to article 7, as tabulated below:

²⁰ See Bullet 2 of page 9, “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”, Action 6 – 2015 Final Report.

²¹ <http://www.oecd.org/ctp/treaties/ground-breaking-multilateral-beps-convention-will-close-tax-treaty-loopoles.htm>

²² <http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>

	Article 7			
	7(1) Default option	7(4) Opt-in provision	7(6) Opt-in provision	7(7) Opt-in provision by agreement
Operative clauses: 7(1); 7(4); 7(6) covering 7(8) to 7(13), and 7(7)	tax benefit not granted if one of principal purposes of transaction or arrangement is to obtain tax benefit	given that benefit denied under paragraph 1, upon request & after considering relevant facts, CA shall grant discretionary benefit if it determines benefit should have been granted in absence of transaction or arrangement in 7(1).	a party may choose to apply the simplified limitation of benefits provision (SLOB), containing in paragraphs 8-13, to its CTAs	In case where only some parties choose SLOB under 7(6), all parties not adopting SLOB, when granting benefit under CTA, agree to adopt SLOB to all parties under 7(7)(a), or agree to adopt SLOB to parties adopting SLOB only under 7(7)(b)
Compatibility clauses: 7(2); 7(5); 7(14)	7(2) paragraph 1 <u>shall apply in place of or in absence of</u> provision denying benefit if one of principal purposes of transaction or arrangement is to obtain tax benefit	7(5) paragraph 4 <u>shall apply to</u> a CTA provision denying tax benefit because the principal purpose is to obtain benefit	7(14) SLOB provision <u>shall apply in place of or in absence of</u> CTA provisions that limit benefits to a resident qualifying for such benefit by meeting conditions under paragraph 7(9) to 7(13).	
Reservation for article 7(1), article 7(6), and entire article 7	7(15)(a): reservation for 7(1), subject to certain requirement met; 7(15)(b): reservation for 7(1) as compatible provision exists		7(15)(c): reservation for 7(6) as compatible provision exists; 7(16): reservation of entire article 7, subject to certain requirement met.	
Notifications: 7(17)(a) to (17)(d), 17(e)	7(17)(a) notify whether each of the CTAs contains a provision to which the compatibility clause shall apply	7(17)(b) notify if a party chooses to grant discretionary benefit under 7(4)	7(17)(c) notify if a party chooses to adopt SLOB under 7(6)	7(17)(d) notify if a party not adopting SLOB agree to adopt 7(7)(a) or (b)

4.2. Interaction between Operative and Compatibility Clauses

Article 7(1) provides for the principal purpose test (the PPT), which stand alone as the default option. Article 7(4) contains an optional provision, which is used to modify the application of Article 7(1) to the relevant CTA provisions. Articles 8 to 13 provide for the SLOB, which Parties to the MLI are free to choose.

Article 7(1), 7(4) and 7(8) to 7(13) are the operative clauses. They replicate the contexts in the 2017 update on the Model Tax Convention that has incorporated the counter-BEPS measures. The operative clauses do not directly modify the Covered Tax Agreements (the CTAs). Instead, by

the operation of the compatibility clauses, a contracting jurisdiction adapts the provision in operative clause to the CTAs, subject to any reservations entered by that contracting jurisdiction. Article 7(2), Article 7(5), and Article 7(14) are the compatibility clauses, which modify the application of the operative clauses to the CTAs in the following way:

- [2] Paragraph 1 [of Article 7] *shall apply in place of or in the absence of* provisions of a Covered Tax Agreement that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.
- [5] Paragraph 4 [of Article 7] *shall apply* to provisions of a Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.
- [14] The Simplified Limitation on Benefits Provision [Article 8 to 13] *shall apply in place of or in the absence of provisions of* a Covered Tax Agreement that would limit the benefits of the Covered Tax Agreement ... only to a resident that qualifies for such benefits by meeting one or more categorical tests. [Emphasis added.]

Section 5 - Notification and Reservation Provisions

5.1.1. Notification of reservations

Notifications are required if a contracting jurisdiction makes a reservation for an article, or a provision of an article, of the MLI not to apply to the relevant provision of the CTA, or that the CTA already has a provision that addresses the same issue as the provision of the MLI, where the existing provision is a provision compatible to the corresponding MLI provision.

5.1.2. Notification to give legal relevance

Notifications are also required to give legal effect to the opt-in provision that a contracting jurisdiction has chosen. The modification by the compatibility clause of the provisions of the CTA articles shall become in force for a signatory on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit by that signatory of Instrument of Ratification, Acceptance, or Approval by the MLI parties.²³

²³ See paragraph 2 of Article 34 of the Multilateral Instrument (the MLI).

Table A below shows the notifications, as denoted by the letter "Y", given under Article 7(17) by some selected contracting jurisdictions pursuant to Article 29 – Notifications, as per the information from the MLI database's matrix of options and reservations, which the OECD Depository received, as of 28 June 2019.²⁴

Table A - Notification matrix for opt-in provisions under Article 7(17)(b), (c), and (d)

		(i)	(ii)	(iii)
Jurisdictions	Status	Opt-in for article 7(4) to supplement the application of the PPT under article 7(1).	Opt-in for the SLOB under Article 7(6) in addition to the PPT.	A party that adopts the PPT, agrees to adopt SLOB symmetrically under Article 7(7)(a) or asymmetrically under 7(7)(b).
Notifications given		pursuant to article 7(17)(b)	pursuant to article 7(17)(c)	pursuant to article 7(17)(d)
Argentina	P		Y	
Denmark	P			Y
Hong Kong	P			
India			Y	
Ireland		Y		
Japan				
Mauritius	P	Y		
New Zealand		Y		
Norway	P			Y
Russia			Y	
Singapore		Y		
Slovak Republic			Y	
United Kingdom		Y		

P = provisional list pending deposit of Instrument of Ratification; SLOB = simplified limitation of benefit

Matching of notifications

Note that if Article 7(4) is chosen, it will modify Article 7(1). Article 7(17)(b) of the MLI provides that each Party that chooses to apply paragraph 4, which modifies paragraph 1, shall notify the

²⁴ <http://www.oecd.org/tax/treaties/mli-database-matrix-options-and-reservations.htm>

Depository of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where *all Contracting Jurisdictions* have made such a notification. [emphasis added.] If notification is not given by all the parties, the choice shall not apply with respect to the CTAs. Articles 7(17)(c) and (d) also impose such a condition that provides that only where all contracting jurisdictions have given notifications, the provision of the MLI shall apply to the CTAs. The term "all contracting jurisdictions" covers both parties of a bilateral tax treaty and the multiple parties of a multilateral tax treaty respectively.

An example of a multilateral tax treaty is the Convention between the Nordic Countries for the Avoidance of Double Taxation with respect to Taxes on Income and Capital (23 Sept 1996), as concluded by six signatory states: Denmark, the Faroe Islands, Finland, Iceland, Norway, and Sweden.²⁵ Note that Greece and Norway, which are two of the contracting jurisdictions listed in Table A, have made a matched notification, but the opt-in provision under Article 7(7) shall not apply as it does not satisfy the approval requirement of "all contracting jurisdictions" in Article 7(17)(d) with respect to the Nordic Multilateral Double Taxation Convention.

Table B - Notifications by some of the parties choosing paragraph 4 in Table A

		Russia	Mauritius	New Zealand	Singapore	United Kingdom
Russia		X				
Mauritius	P		X	Y	Y	Y
New Zealand			Y	X	Y	Y
Singapore			Y	Y	X	Y
United Kingdom			Y	Y	Y	X

It is observed from Table B that except for Russia, four other contracting parties have chosen to opt-in for Article 7(4). Therefore, Article 7(4) shall apply to the New Zealand-Singapore CTA, the New Zealand-UK CTA, and the Singapore-UK CTA because each of the bilateral CTAs contains a matched notification with respect to the application of Article 7(4). With regard to the CTAs concluded by Mauritius provisionally, they have no legal force until after Mauritius has deposited the Instrument of Ratification to the OECD Depository, pursuant to Article 34(2).

5.2. Reservations

5.2.1. Reservations under Article 7(15)(a), 15(b), and 15(c)

²⁵ <http://internationaltaxtreaty.com/download/Sweden/DTC/Sweden-Iceland-DTC-Sep-1996.pdf>

Article 7(15) provides that “[a] Party may reserve the rights:

- (a) for paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to adopt a combination of a detailed limitation on benefits provision and either rules to address conduit financing structures or a principal purpose test, thereby meeting the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package; in such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard;
- b) for paragraph 1 (and paragraph 4, in the case of a Party that has chosen to apply that paragraph) not to apply to its Covered Tax Agreements that already contain provisions that deny all of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits;
- c) for the Simplified Limitation on Benefits Provision not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 14.”

Article 7(15) provides for three reservations, in respect of which a party is permitted to make under article 28(1), as follows:

The first one under Article 7(15)(a) is for a party to opt out of the default PPT option in Article 7(1) on the basis that it intends to adopt the DLOB-Plus option, as defined earlier, in order to meet the minimum standard for preventing treaty abuse, with the condition that both parties shall endeavour to reach a mutually satisfactory solution that meets the minimum standard;

The second one under Article 7(15)(b) is for the party not to apply the PPT provision under paragraph 1, as modified by paragraph 4 if applicable, to the CTAs that already have such a provision addressing the same issue;

The third one under Article 7(15)(c) is for a party not to apply the SLOB provision to the CTAs that already have such a provision. Article 7(15)(a) is a full reservation (exclusion) entered by a party. But articles 7(15)(b) and (15)(c) is a partial reservation that only applies to some of, instead of all, the CTAs, which appears at odds with the reciprocity principle.

5.2.2. Compatibility principle

The reason why a contracting jurisdiction is permitted to make such reservations under Article 7(15)(b) or (c) is that the relevant CTA provision has been modelled on the 2017 update on the Model Tax Convention that had incorporated the provisions meeting the minimum standard

under the recommendations of the BEPS Action 6 - 2015 Final Report (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances). In other words, because the provision of the CTA is compatible with Article 7(15)(b) or 7(15)(c) of the MLI, it is excluded from the modification by the compatibility clause under paragraph 2 and paragraph 5 of Article 7.

The compatibility principle has its legal base under Article 30(3) of the Vienna Convention on the Law of Treaties that provides that "[w]hen all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59 (the Vienna Convention), the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."²⁶ That is, where an existing CTA contains a provision that addresses the same issue as that under the relevant MLI Article, that CTA provision should be excluded from the modification by the compatibility clause and shall continue to apply in future.

Section 6 – Applications of Article 7 to CTAs

6.1.1. Application of Article 7(1) under the MLI to some of the CTAs concluded by Hong Kong, provisionally²⁷

6.1.1.1. Reservations made under Article 7(15)(a) and 7(15)(b)

Pursuant to article 7(15)(a), a contracting jurisdiction (a party) may opt out of the default option in Article 7(1) on the basis that it intends to adopt a combination of a detailed LOB provision (DLOB) and conduit structure or a DLOB and PPT, thereby meeting the minimum standard for preventing treaty abuse under the OECD/G20 package. In such cases, the contracting jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum. It is noted that Hong Kong does not intend to adopt a detailed limitation-of-benefit provision and rules to address conduit financial arrangement, pursuant to Article 7(15)(a).

Pursuant to Article 7(15)(b), Article 7(1) shall not apply because the CTA provision already contains an Article 7(1) provision. Hong Kong has provisionally reserved its right, pursuant to Article 7(15)(b), not to apply Article 7(1) to the CTA with Belarus because Article 27(1) of the HK-Belarus CTA already contains a PPT provision, which is compatible with Article 7(1).²⁸

²⁶ <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

²⁷ China signed the MLI on 7 June 2017 on behalf of Hong Kong, which has not completed the internal procedure for ratification by the legislative body.

²⁸ <http://www.oecd.org/tax/treaties/beps-ml-position-hong-kong.pdf> ;
https://www.ird.gov.hk/eng/tax/dta_inc.htm

6.1.1.2. Notification given under Article 7(17)(a)

A contracting jurisdiction that has not made a reservation under Article 7(15)(a) shall, pursuant to Article 7(17)(a), notify the Depository of whether any of its CTAs that is NOT subject to a reservation made under Article 7(15)(b) contains a provision, as described under Article 7(2). For example, Hong Kong has provisionally notified that Article 7(1) shall apply in place of the provisions of Article 10(7), Article 11(9), and Article 12(7) of the HK-Canada CTA.²⁹

The reason for the requirement to give notification under Article 7(17)(a) is that if a contracting jurisdiction adopts the PPT-only approach (Article 7(1), and Article 7(4) if applicable), provided that it has not chosen to adopt the DLOB-plus approach as under Article 7(15)(a), it should give notification that which CTA contains a provision as described in paragraph 2 of Article 7 (the compatibility clause) unless that CTA has been excluded by the reservation as per Article 7(15)(b) that it already contains the provision for the PPT option.

6.1.2. Application of Article 7(1) of the MLI to some of the CTAs concluded by Singapore

The same rule applies with respect to the notification given under Article 7(17)(a), which provides that Singapore shall make a notification that the PPT provision in Article 7(1) shall apply in place of an existing provision in the CTA, or be added to it in the absence of such a provision. Examples are:

- Article 7(1) of the MLI is inserted as article 28A immediately after article 28 of Japan–Singapore CTA *in the absence of* a PPT provision.³⁰
- Article 7(1) of the MLI is inserted as article 24A immediately after article 24 to *replace paragraph 6 of article 10 (Dividend) and paragraph 7 of article 12 (Royalty)* of the New Zealand-Singapore CTA.³¹

²⁹ <http://www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf> ;<https://www.elegislation.gov.hk/hk/cap112CF@2014-04-10T00:00:00>

³⁰ [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/Protocol%20amending%20Singapore-Japan%20DTA%20\(Ratified\)\(MLI\)\(1%20Apr%202019\).pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/Protocol%20amending%20Singapore-Japan%20DTA%20(Ratified)(MLI)(1%20Apr%202019).pdf)

³¹ [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/Singapore-New%20Zealand%20DTA%20\(Ratified\)\(MLI\)\(1%20Apr%202019\).pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Quick_Links/Singapore-New%20Zealand%20DTA%20(Ratified)(MLI)(1%20Apr%202019).pdf)

Table C – Summary of the PPT-only approach

Operative Clause	CTA version	Modification by compatibility clause, subject to reservation	Notification
Do not apply PPT in Article 7(1) to CTA, and intends to adopt DLOB-Plus approach		Make reservation pursuant to Article 7(15)(a), subject to a mutually satisfactory solution reached between the parties	Notify Depositary of the reservation, pursuant to Article 28(1) ³²
Adopts the PPT provision under Article 7(1)	The CTA already contains a PPT provision compatible to Article 7(1). i.e. HK-Belarus CTA	Reserve the right pursuant to Article 7(15)(b), not to apply Article 7(1) to the CTA	Notify Depositary of the reservation pursuant to Article 28(1) ³³
	The CTA does not contain a PPT provision i.e. HK-Canada CTA; New Zealand-Singapore CTA, Japan-Singapore CTA	Article 7(1) shall apply in place of, or in the absence of, a PPT provision	Notify Depositary that the CTA contains a provision described in Article 7(2), pursuant to Article 7(17)(a)

6.2. Application of Article 7(4)

5.2.3.1. Notification

Table D below has used the information from Table A. It shows that Ireland, New Zealand, Singapore, and the United Kingdom all have adopted the option in Article 7(4) that supplements the application of the PPT provision in Article 7(1). Japan and Slovak, both of which have confirmed their MLI position definitively, do not adopt the supplementary option in Article 7(4).³⁴

From a Singapore perspective, Article 7(4) shall apply to the Singapore-Ireland CTA, the Singapore-New Zealand CTA, the Singapore-Mauritius CTA, and the Singapore-UK CTA because the 4 jurisdictions have chosen to apply Article 7(4) and the notifications have been matched for the preceding bilateral tax treaties. However, Article 7(4) shall not apply to the Singapore-Japan CTA and the Singapore-Slovak Republic CTA because both Japan and Slovak Republic have not

³² <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

³³ Ditto

³⁴ <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>

chosen or opt-in to apply Article 7(4) to their respective CTAs. This is shown in the following table:

Table D - Contracting jurisdictions that adopt Article 7(4) to supplement Article 7(1) with reference to Table A

	Ireland	Japan	Mauritius	New Zealand	Singapore	Slovak Republic	United Kingdom
Ireland	X	N	Y	Y	Y	N	Y
Japan	N	X	N	N	N	N	N
Mauritius	Y	N	X	Y	Y	N	Y
New Zealand	Y	N	Y	X	Y	N	Y
Singapore	Y	N	Y	Y	X	N	Y
Slovak Republic	N	N	N	N	N	X	N
United Kingdom	Y	N	Y	Y	Y	N	X

6.3. Application of Article 7(6) of the MLI to the CTAs concluded by Argentina, Slovak Republic, Russia, and the U.S. with reference to Table A

Contracting jurisdictions (Parties to the MLI)	Status	Opt-in for the SLOB under Article 7(6) in addition to the PPT, pursuant to Article 7(17)(c)	Reserve right not to apply Article 7(6) to the CTAs, pursuant to Article 7(15)(c)
Argentina	Provisional	Y	Y
India	Definitive	Y	
Russia	Definitive	Y	Y
Slovak Republic	Definitive	Y	

Notification

Article 7(17)(c) of the MLI provides that each Party that chooses to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6 of article 7 shall notify the Depository of its choice.

Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.

The U.S. has not signed the MLI. Therefore, it is excluded from the analysis.

From an Indian perspective, India, Russia and Slovak Republic have given notification to the Depository to apply the SLOB provision to their CTAs. Article 7(6) shall apply to India-Russia CTA, India-Slovak Republic CTA, and the Russia-Slovak Republic CTA because the parties to each pair of CTAs have made a matched notification. However, in respect of the CTAs with Argentina, Article 7(6) shall apply but have no legal effect because Argentina has not confirmed its position definitively.³⁵ Pursuant to Article 34(2), Article 7(6) shall come into force on the first day of the month after a period of 3 calendar months that begins on the date Argentina deposits the instrument of ratification to the Depository. If Argentina confirms its position later, the Argentina-India CTA, the Argentina-Russia CTA, and the Argentina-Slovak Republic CTA are considered to have made a matched notification to the Depository and Article 7(6) shall apply.

From a Russian perspective, Russia and Slovak Republic have given a notification to the Depository to apply SLOB provision to the CTAs. Article 7(6) shall apply because both the parties to the MLI have made a matched notification. Russia and Argentina have given notification that the SLOB provision shall apply to the Russia-Argentina CTA. However, Article 7(6) shall not apply because Argentina has not confirmed its position definitively.³⁶ Pursuant to Article 34(2), Article 7(6) shall come into force on the first day of the month after a period of 3 calendar months that begins on the date India deposits the instrument of ratification to the Depository. If Argentina confirms its position later, both Argentina and Russia are considered to have made a matched notification to the Depository and Article 7(6) shall apply.

Reservation

Notifications are required if a contracting jurisdiction makes a reservation for an article, or a provision of an article, of the MLI not to apply to the relevant provision of the CTA, or that the CTA already has a provision that addresses the same issue as the provision of the MLI, where the existing provision is a provision compatible to the corresponding MLI provision.

Russia has chosen to adopt SLOB in Article 7(6) but it also reserves its right not to apply Article 7(6) to some of its CTAs. Pursuant to article 7(15)(c), Article 7(6) shall not apply with respect to the

³⁵ <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>

³⁶ <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>

China-Russia CTA, Ecuador-Russia CTA, and US-Russia CTA on grounds that the respective CTA already contains a provision that is compatible with the SLOB under Article 7(6). As of 18th June 2019, the other party to those CTAs has not confirmed their respective positions by the deposit of the Instrument of Ratification to the OECD Depository.³⁷

Table E - The PPT-Plus approach-1 [either the PPT-and-SLOB approach or PPT-and-DLOB approach] The table shows the interactive relations between the opt-in provision under paragraph 6 of Article 7 and the opt-out provision (reservation) under paragraph (15)(c) of Article 7.

Operative clause	CTA versions	Reservations	Notifications
All parties adopt the SLOB provision pursuant to Article 7(6)	The CTA already contains a SLOB provision, compatible to Article 7(6).	Reserve the right pursuant to Article 7(15)(c) for the SLOB provision not to apply to the CTA	Notify Depository of the reservation
	The CTA does not contain a SLOB provision in Article 7(6)	Article 7(6) shall apply in place of, or in the absence of, a SLOB provision	Notify Depository of the CTA containing a provision described under Article 7(14), pursuant to Article 7(17)(c)

6.4. Application of Article 7(7) of the MLI

Notification

Article 7(17)(d) of the MLI provides that each Party that does not choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, but chooses to apply either subparagraph a) or b) of paragraph 7 shall notify the Depository of its choice of subparagraph. Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.

Article 7(7) addresses the situation that provides that only some of the parties adopt the SLOB provision in Article 7(6), all the parties not adopting the SLOB, when granting the benefits under the CTA, may by agreement adopt Article 7(7)(a), under which the SLOB provision shall apply to all parties symmetrically, or Article 7(7)(b) under which the SLOB provision shall apply asymmetrically to the parties that have chosen the SLOB option. A summary is provided in Table F below:

³⁷ <http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>

Table F - The PPT-Plus approach-2 [Either adopting the PPT-and-SLOB approach, or the PPT-and-DLOB approach] The table shows the interactive relations between the parties that adopt the SLOB option under Article 7(6), and the parties that do not adopt the SLOB option.

Some parties adopt the SLOB provision under Article 7(6)	Do all the parties not adopting Article 7(6) agree to adopt Article 7(7)(a) or (b), pursuant to Article 7(17)(d)?	If yes for (a), does either party make reservation not to adopt SLOB under Article 7(15)(c) and has given notification?	If yes, Article 7(7)(a) shall not apply	
			If no, Article 7(7)(a) shall apply in place of, or in the absence of, a SLOB provision symmetrically	Notify Depositary pursuant to Article 7(17)(d)
		If yes for (b), does either party make reservation not to adopt SLOB under Article 7(15)(c) and has given notification?	If yes, Article 7(7)(b) shall not apply	
			If no, Article 7(7)(b) shall apply in place of, or in the absence of, a SLOB provision asymmetrically	Notify Depositary pursuant to Article 7(17)(d)
		If no, does either party adopting Article 7(6) make reservation for entire Article 7 not to apply, pursuant to Article 7(16)?	If yes, Article 7 does not apply, subject to a mutually satisfactory solution reached that meets the minimum standard.	
			If no, the SLOB does not apply.	

Reservations

As of 28th June 2019, six contracting jurisdictions that do not adopt the SLOB in Article 7(6) have provisionally agreed to apply either Article 7(7)(a) symmetrically or (b) asymmetrically to the CTAs with the parties that adopt the SLOB provision when granting the tax benefits.³⁸ Among them, both Denmark and Norway, as listed in Table A, have provisionally chosen to adopt 7(7)(a).³⁹

Article 7(16) also addresses the situation under which a party not adopting the SLOB provision in article 7(6) does not agree to adopt either Article 7(7)(a) or (b). If that happens, then any party that adopts the SLOB provision in Article 7(6) has two policy choices:

³⁸ Denmark, Iceland, Jamaica, and Norway provisionally adopt (7)(a), while Cote d'Ivoire and Greece provisionally adopt (7)(b).

³⁹ <http://www.oecd.org/tax/treaties/mli-database-matrix-options-and-reservations.htm>

i) it may reserve its right for the entire Article 7 not to apply to the CTAs for which one or more of the other parties has not agreed to adopt the SLOB provision in Article 7(6). In that case, Article 7(16) provides that the parties should reach a mutually satisfactory solution that meets the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package; or

ii) it does not reserve its right under article 7(16). If it does not, that will not satisfy the requirement “where all the contracting jurisdictions have chosen to apply it” as per article 7(6). In that case, the provision of SLOB under Article 7(6) does not apply to the CTAs.

7. Conclusion

Article 7 contains three opt-in provisions under paragraphs 4, 6 and 7. The opt-in provision under paragraph 4, which supplements the application of PPT provision under Article 7(1), provides that the contracting jurisdiction may grant discretionary tax benefits with respect to an item of income or capital where certain conditions are met. Paragraph 6 provides for a party to adopt the SLOB provision in addition to the default option of PPT under paragraph 1. Paragraph 7 provides that the parties not adopting the SLOB provision may agree that, when granting benefits under the CTA, the SLOB provision shall apply to the CTAs either symmetrically or asymmetrically.

Article 7 contains 4 reservations under paragraph 15(a), (b), (c), and paragraph 16 respectively. A party to the MLI may reserve its right under paragraph 15(b) or 15(c) where the CTA provision contains a provision that is compatible to the PPT or SLOB provision respectively. A party may reserve its right under paragraph 15(a) for the default PPT provision not to apply to its CTAs, on the basis that it intends to adopt either a DLOB provision and a conduit structure, or a DLOB and a PPT provision. A party may also reserve its right under paragraph 16 for the entire article 7 not to apply to its CTAs if either one of the parties that adopts a PPT-only option does not agree to adopt the option under paragraph 7(a) or 7(b). In both cases of reservation entered under either paragraph 15(a) or paragraph 16, the contracting jurisdictions are required to reach a mutually satisfactory solution which meets the minimum standard under the OECD/G20 BEPS package.

This paper has examined the legal principles of the public international law that the MLI has contained, the mechanism of the reservations and the notifications in the MLI, the relations between different positions of the parties with respect to the reservations made and notifications given, and the interaction between reservations and notifications with respect to Article 7, with a view to providing the readers with a step-by-step guide to understanding the legal texts. Specifically, the logic underlying the texts of article 7(6) and article 7(7) makes it a bit complicated for the stakeholders to understand how the contracting jurisdictions could apply articles 7(6) and 7(7) to the CTAs. However, the energy would be justified if a maximum number of the parties with different levels of commitment to the adoption of the MLI to the CTAs were to be included into the Action 15 project.