

Multilateral tax pact to open doors for India to enter into bilateral APAs, say tax experts



New Delhi, May 30: India's decision to sign the multilateral convention on tax treaty related measures under the OECD-G20 BEPS project should spell music for several taxpayers faced with economic double taxation or transfer pricing issues.

This is because the signing of the multilateral instrument (MLI) at Paris on June 7 could open the doors for India to entertain bilateral advance pricing agreements (APAs) or mutual agreement procedures (MAP) with several countries for resolving transfer pricing issues, say tax experts.

Finance Minister Arun Jaitley is slated to travel to Paris for signing this MLI besides attending the OECD Ministerial Council meeting.

In the absence of a specific article (Article 9(2) for corresponding adjustments between jurisdictions on transfer pricing matters) in several tax treaties that India had entered into earlier, bilateral APAs or MAP on transfer pricing issues was hitherto not possible.

However, this situation will be covered when India on June 7 signs the multilateral instrument, which is an outcome of the OECD/G20 BEPS project to tackle base erosion and profit shifting, they said.

"In one stroke, this could open up the option of bilateral resolution of transfer pricing matters (both MAP and APAs) with several countries, which is currently not feasible due to lack of paragraph 2 to Article 9 in double tax treaties with those countries", Kunj Vaidya, Leader-Transfer Pricing, Price Waterhouse & Co LLP told Business Line here.

A Bilateral APA is an APA that involves the tax payer, associated enterprise (AE) of the tax payer in the foreign country, tax authority of the country where the taxpayer is located and the foreign tax authority.

An APA is an agreement between a taxpayer and tax authority determining the transfer pricing methodology for pricing the tax payer's international transactions for future years.

Aseem Chawla, Partner, Phoenix Legal, a law firm, said that this development should pave way and provide an enabling platform for India to enter into bilateral agreements with other nations which would facilitate in mitigating double taxation and assist in curbing systematic activities aimed at tax avoidance causing loss to the exchequer.

Amit Singhania, Partner, Shardul Amarchand Mangaldas & Co, a law firm, said that India signing the multilateral agreement will give way to bilateral pacts with other jurisdictions and will certainly aid in avoiding economic double taxation of income under transfer pricing adjustments.

The proposed multilateral convention to be signed at Paris is being conceived as a multilateral instrument in view of the final BEPS package —which has identified 15 actions — requiring changes to more than 3,000 bilateral tax treaties which will be burdensome and time consuming.

This convention would swiftly modify all covered bilateral tax treaties (covered tax agreements) to implement BEPS measures.

India proposes to make a provisional list of Covered Tax Agreements and a provisional list of reservations at the time of signature on June 7.

Final lists for both will be submitted by India at the time of submission of instrument of ratification.