
TECHNICAL

Direct Taxation

[DOUBLE TAXATION RELIEF \(MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING\) ORDER 2020 \[P.U. \(A\) 224/2020\]](#)

This [Order](#) was gazetted on 4 August 2020. According to Paragraph 2 (Double Taxation Relief) of the Order, the arrangements specified in the Schedule of the Order have been made by the Government of Malaysia and the governments which have signed the *Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting* ("Multilateral Convention") with a view to affording relief from double taxation in relation to Malaysian tax and such governments' tax and that it is expedient that those arrangements shall have effect.

The parties to the Multilateral Convention recognize that governments lose substantial corporate tax revenue because of aggressive international tax planning that has resulted in base erosion and profit shifting ("BEPS") i.e. artificially shifting profits to locations where they are subject to non-taxation or reduced taxation. It is important to ensure that profits are taxed where substantive economic activities generating the profits are carried out and where value is created. The OECD/G20 BEPS project has developed a package of tax treaty related measures to address certain hybrid mismatch arrangements, prevent treaty abuse, address artificial avoidance of permanent establishment status and improve dispute resolution. The Multilateral Convention is to address the need for an effective mechanism to implement the said treaty related BEPS measures in a multilateral context and agreed changes in a synchronized and efficient manner across the network of existing agreements for the avoidance of double taxation on income (so that they are interpreted to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion/avoidance) without the need to bilaterally renegotiate each such agreement.

The Multilateral Convention set-out in the Schedule of the Order consists of the following Parts and Articles:

Part	Article
I – Scope and Interpretation of Terms	1 – Scope of the Convention 2 – Interpretation of Terms
II – Hybrid Mismatches	3 – Transparent Entities 4 – Dual Resident Entities 5 – Application of Methods for Elimination of Double Taxation

Part	Article
III – Treaty Abuse	<p>6 – Purpose of a Covered Tax Agreement</p> <p>7 – Prevention of Treaty Abuse</p> <p>8 – Dividend Transfer Transactions</p> <p>9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property</p> <p>10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions</p> <p>11 – Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents</p>
IV – Avoidance of Permanent Establishment Status	<p>12 – Artificial Avoidance of Permanent Establishment Status ("AAoPES") through Commissionaire Arrangements and Similar Strategies</p> <p>13 – AAoPES through the Specific Activity Exemptions</p> <p>14 – Splitting-up of Contracts</p> <p>15 – Definition of a Person Closely Related to an Enterprise</p>
V – Improving Dispute Resolution	<p>16 – Mutual Agreement Procedure</p> <p>17 – Corresponding Adjustments</p>
VI – Arbitration	18–26
VII – Final Provisions	27–39 (on ratification, reservations, notifications, subsequent modifications to covered tax agreements, amendment, entry into force/effect, withdrawal, etc)

Members may read the [Order](#) in full at the official website of the [Attorney-General's Chambers](#).

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