Tax alert: Specific notification is necessary for effecting MLI provisions in relevant tax treaty

26 August 2025

The Mumbai Bench of the Income-tax Appellate Tribunal (ITAT) has held that provisions of MLI (multilateral instrument) cannot be brought into the relevant tax treaty in the absence of a specific notification by the government, under section 90(1) of the Income-tax Act, 1961. Further, it was also held that the taxpayer was formed in Ireland for commercial objectives and not to principally obtain tax benefit under the tax treaty. Hence the taxpayer is entitled to benefit under the India-Ireland tax treaty.

In a nutshell

A tax treaty, even when duly signed and ratified, does not become enforceable within the municipal legal system, unless it is expressly brought into force through a notification issued under section 90(1) of the ITA. In the absence of a notification, treaty provisions, however binding they may be in international law, do not confer enforceable rights upon taxpayers before Indian courts and tribunals.

Hence, neither the bare provisions of the MLI nor any synthesised text reflecting its intended application, can form the basis for altering the application of an already notified tax treaty.

The principles in earlier SC ruling apply to the present case as follows:

- India-Ireland tax treaty, duly notified in 2002, continues to remain the operative and governing instrument for determining the tax treatment between the two countries. Under domestic law, this position continues unless a modification to the tax treaty is incorporated through a separate notification, under section 90(1) of the ITA.
- In the absence of any domestic notification, the Principal Purpose Test (PPT) contained in Articles 6 and 7 of MLI cannot be invoked against the taxpayer.

Relief from source-country taxation of aircraft-leasing activity constitutes a stated and substantive object of the India-Ireland tax treaty. Accordingly, even after it was held that the PPT on account of the absence of a section 90(1) notification shall not be applicable, the taxpayer would, in any event, be entitled to treaty protection as the relief claimed aligns squarely with the treaty's object and purpose.

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Background:

- The taxpayer[1] is a company incorporated on 18 April 2018, under the laws of Ireland and is a tax resident with a valid Tax Residency Certificate (TRC) issued by the Irish Revenue Authorities. The taxpayer forms part of a large business group, an international aircraft leasing conglomerate consisting of four Irish entities, a finance company, a holding company and two asset owning lessor companies engaged in the business of leasing aircraft to operators worldwide. The business group had a leasing footprint in India, China, and Korea, with eight aircraft leased in total.
- The taxpayer in its ordinary course of business operation, had entered into separate dry operating lease agreements with an Indian airline company (I Co). These leases pertained to certain aircraft which were to be redelivered to the lessor upon the expiry of the lease term in accordance with the respective agreements. The brief facts of the taxpayer were as follows:
  - It had established aviation expertise and knowledge pool.
  - The directors of the taxpayer were Irish, its bankers were Irish,
  - The company secretary was Irish and the taxpayer, being a Special Purpose Vehicle (SPV), was managed by a reputed management service provider (A Co) in Ireland. The taxpayer had engaged A Co as its administrator to undertake day-to-day operations. A Co was a management company incorporated in Ireland and was licensed to provide administration services to companies such as the taxpayer.
  - The taxpayer held its principal bank account in Ireland.
  - The leased asset (aircraft) was registered in the name of the taxpayer and the bill of sale was in the name of taxpayer.
  - Operational and remarketing services were sourced from international service providers, including a bank in London with supporting agreements and invoices
- For the Financial Year (FY) 2021-22, corresponding to Assessment Year (AY) 2022-23, the taxpayer filed its return of income, declaring 'Nil' taxable income by claiming the following tax positions:
  - Lease rentals from the dry operating leases did not constitute 'royalty' under Article 12(3)(a) of the India–Ireland tax treaty, which expressly excludes payments for the use of aircraft;
  - In the absence of a Permanent Establishment (PE) in India under Article 5 of the India-Ireland tax treaty, the income constituted business profits taxable exclusively in Ireland under Article 7; and
  - Without prejudice, the income was exempt under Article 8(1) of the India-Ireland tax treaty as being derived from the operation of aircraft in international traffic.
- During the course of the audit proceedings the Assessing Officer (AO), rejected the above claim of the taxpayer and concluded that the PPT under Articles 6 and 7 of the Multilateral Instrument (MLI)[2] was not satisfied based on reasons such as:
  - the ultimate parent entity was a Cayman Islands fund;
  - the taxpayer's directors were holding positions in multiple other Irish companies;
  - the day-to-day management was outsourced to A Co; and
  - certain lease management functions were contracted to another entity in London.
- Aggrieved, the taxpayer filed objections before the Dispute Resolution Panel (DRP).
- The DRP rejected the taxpayer's objection by upholding the AO's view and held that aforesaid factors

[1] TFDAC Ireland II Ltd vs. DCIT, 4(1)(2), Mumbai (2025) ITA No. 1198/Mum/2025 (Mumbai – Trib.) [this is taken as lead matter and merged along with other appeals]

[2] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)

were not enough to prove that the principal purpose was not to avail the tax benefits of the India-Ireland taxpayer, particularly because the ultimate parent of the taxpayer was not Irish.

- Aggrieved, the taxpayer filed an appeal, and the matter reached before the Mumbai Bench of the Income-tax Appellate Tribunal (ITAT).

Decision of the ITAT:

The ITAT acknowledged that the main issue had following two sub-questions:

- Whether the provisions of the MLI can restrict the applicability of the India-Ireland tax treaty in the absence of a separate notified protocol to that tax treaty? and;
- If the answer to the above was affirmative, whether, on the facts of the present case, the PPT in Articles 6 and 7 of the MLI was satisfied?
- The ITAT, inter-alia, noted /observed the following:

Ireland as hub for aircraft business

- Ireland is recognised as the epicentre of the global aircraft leasing industry. It is a jurisdiction of convenience but also a pre-eminent hub, hosting 19 of the world's 20 largest lessors and accounting for approximately 60% of global leasing activity.
- This was anchored in decades of accumulated expertise and experience supported by highly skilled workforce, a sophisticated legal and regulatory infrastructure and its geographic positioning that is strategically aligned to the needs of international commerce.

Procedure adopted to apply the MLI vis-à-vis the India–Ireland tax treaty

- The India-Ireland tax treaty was notified in the official gazette on 11th January 2002; the MLI was notified on 9th August 2019.
- The India-Ireland tax treaty had been designated as a Covered Tax Agreement (CTA) for the purpose of MLI. Ireland for its part, ratified the MLI with effect from 1st May 2019.
- The MLI's genesis lay in the desire to overcome the protracted nature of bilateral treaty renegotiations. For India, with over 90 tax treaties, and for treaty partners with similarly extensive networks, individual renegotiation would have been a herculean task. The operational mechanics of the MLI was structured in a manner that promoted efficiency and consensus.
- Each member state (e.g. India) was required to deposit a signed instrument with the OECD specifying treaties it designates as CTAs, together with the amendments or reservations it proposes qua each tax agreement.
- Where the counterparty to a bilateral treaty (e.g. Ireland) also identified the same bilateral treaty (e.g. India-
- Ireland tax treaty) as a CTA and agreed to the same amendments, then it could be said that consensus had been reached on the amendments.
- The prolonged and arduous process of separate bilateral negotiations was largely averted through MLI. However, the way the agreed amendments were implemented, continued to remain within the sovereign domain of each contracting state. The OECD does not dictate the modalities through which such amendments are given effect under municipal laws of each member country.

Earlier ruling[3] of the Supreme Court (SC) on applicability of MFN[4] clause without separate notification

- In an earlier SC ruling, the taxpayers sought to invoke the MFN clauses contained in earlier tax treaties[5] in order to import certain more favourable provisions contained in subsequent tax treaties that India had signed with other OECD member states[6]. As the MFN clause operated automatically, once the later treaty was notified, the more beneficial scope or lower rates became part of the earlier treaty without further formality.
- The SC rendered a landmark ruling on the constitutional status and domestic enforceability of tax treaty, emphatically clarifying that the assimilation of such international instruments into the Indian legal framework is neither automatic nor mechanical.
- A tax treaty, even when duly signed and ratified, does not per se become enforceable within the municipal legal system, unless and until it is expressly brought into force through a notification issued under section 90(1) of the ITA. In the absence of such notification, treaty provisions, however binding they may be in international law, do not confer enforceable rights upon taxpayers before Indian courts and tribunals.
- Accordingly, the SC held that any extension of treaty benefits to a new OECD member state can take effect only if India consciously accepts such extension, communicates this position to the treaty partner, and issues a fresh notification under section 90(1) of the ITA. In the absence of such a deliberate and notified amendment, no parity of treatment or 'trigger-event-driven' integration can be presumed.
- The SC reaffirmed the following principles:
  - Parliament retains the exclusive authority to legislate upon treaty provisions where they affect the rights of citizens;
  - Notification under section 90(1) of the ITA is a mandatory precondition for the enforceability of any tax treaty or protocol that alters existing provisions of law; and
  - Domestic courts cannot apply a rigid black-letter interpretive approach, but must account for the constitutional, diplomatic and practical realities that affect different treaties.

Applicability of above SC ruling in present case

- The present case was similar to the above-mentioned SC ruling, where, the original bilateral tax treaty i.e. the India-Ireland tax treaty stood duly notified. Equally, the subsequent MLI had also been formally notified.
- The pivotal question was not the mere existence of notifications in respect of both instruments, but rather whether the resulting modification of the earlier tax treaty, brought about due to the later MLI, had itself been separately notified for the purposes of domestic application.
- Both the India-Ireland tax treaty and the MLI had been notified; however the consequence/impact of the MLI on the India-Ireland tax treaty was not separately notified.
- Hence, based on the above SC ruling, any subsequent tax treaty-based modification of an existing tax treaty can be enforced under municipal law only where a specific section 90(1) notification has been issued incorporating that modification into Indian law.
- The Revenue's contention that, since the MLI had been duly notified and the India-Ireland tax treaty was a CTA, Articles 6 and 7 (i.e., the PPT suite) automatically applied, cannot be reconciled with the

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[3] Assessing Officer (I.T.) v. Nestle SA (2023) 458 ITR 756 (SC)
[4] Most Favoured Nation
[5] India–France and India–Netherlands
[6] Such as the United Kingdom, Slovenia, Lithuania, and Colombia

constitutional and statutory mandate provided by the aforesaid SC ruling.

- The synthesised text which incorporates the MLI provisions into the CTA, is nothing more than an expository compilation intended to facilitate understanding. It has neither been notified in the Official Gazette under section 90(1), nor admitted by the Revenue authority to be a binding legal instrument.
- When the ratio of SC ruling is applied to the facts of the present case, the inevitable conclusion is that the MLI cannot be invoked to curtail or otherwise restrict the benefits available to the taxpayer under the India-Ireland tax treaty, unless the specific consequence of the MLI has been notified under section 90(1) of the ITA.
- In the absence of a notification, neither the bare provisions of the MLI nor any synthesised text reflecting its intended application, can form the basis for altering the application of an already notified tax treaty.
- Hence, Articles 6 and 7 of the MLI cannot be invoked against the taxpayer, as there was no section 90(1) notification incorporating those provisions into the India-Ireland tax treaty.
- The SC principles in earlier ruling apply to the facts of the present case as follows:
  - India–Ireland tax treaty, duly notified in 2002, continues to remain the operative and governing instrument for determining the tax treatment between the two countries. Under domestic law, this position continues unless and until any modification to the tax treaty is expressly incorporated by way of a separate notification issued under section 90(1) of the ITA.
  - Although the MLI was notified in India in 2019, the mere fact of such notification does not, by itself, alter, curtail or restrict the operative provisions of the India–Ireland tax treaty. Such alteration or restriction can take effect only where the specific provisions of the MLI have been expressly incorporated into domestic law through a distinct notification under section 90(1) of the ITA.
  - In the absence of any domestic notification incorporating Articles 6 and 7 of the MLI into the India–Ireland tax treaty, the PPT contained in those Articles cannot be invoked against the taxpayer.

In view of the above, the absence of a specific section 90(1) notification incorporating Articles 6 and 7 of the MLI into the India-Ireland tax treaty goes against Revenue’s case. Consequently, the denial of the tax treaty benefits cannot be upheld in law.

Assuming Article 6 and 7 of MLI are read into the India-Ireland tax treaty, whether the principal purpose of the incorporation/transaction was to take tax benefit of India-Ireland tax treaty or not?

- The structure and purpose of the transaction must be examined holistically, not in isolated fragments. The PPT is a general anti-abuse rule of last resort, to be invoked only where it is reasonable to conclude that one of the principal purposes of an arrangement was to obtain treaty benefits that is contrary to the object and purpose of the treaty provisions.
- The PPT is not intended to be triggered merely because a transaction is structured in a tax-efficient manner.
- The SC in another earlier ruling[7] held that TRC is conclusive proof of residency of foreign taxpayers unless it is a case of treaty shopping or fraud. It cannot be presumed that Irish tax authorities were not familiar with the PPT and have issued TRCs without application of mind.
- An act of statutory authority is presumed to be done in accordance with law. Therefore, in the absence of very compelling reasons, the TRC will be presumed to be valid grounds for allowing benefits of the India-Ireland tax treaty even after notification of MLI.
- As per the OECD Commentary through illustrative examples - where investment decisions are driven by

[7] Union of India v. Azadi Bachao Andolan & Anr. (2004) 10 SCC 1 (SC)

legitimate commercial objectives such as business expansion, operational efficiency or access to resources, the mere availability of treaty benefits does not, by itself, taint the arrangement.

- Ultimate parent company outside Ireland
- The PPT in Articles 6 and 7 of the MLI cannot be read so broadly as to imply that treaty benefits must automatically be denied in every case where the ultimate parent entity of the taxpayer happens to be resident in a third country.
- Bona fide commercial investments are meant to be protected and the PPT does not seek to impair them. The AO and the DRP failed to appreciate that the taxpayer was a separate taxable entity from its shareholders and is itself subject to tax in Ireland at 15 percent on its Irish income. The mere fact that the ultimate shareholder resides outside Ireland does not, by itself, furnish a basis to invoke the PPT. To adopt such an approach would result in wholly unintended and absurd consequences, particularly in cases such as the present where the investment is demonstrably driven by legitimate commercial objectives.
- Formation of SPVs not to take tax treaty benefit
- SPVs, globally work in the same manner and merely because parent company of an SPV is outside the jurisdiction of the SPV, it will not disentitle the SPV of the protection of the tax treaty between the country in which the SPV is incorporated and the source country of investment/activity.
- It is not necessary for the SPV to individually have employees on its rolls. Appointment of independent management service providers is also duly recognized under Indian law. In the present case, it is not the case of the tax department that the board of directors of the taxpayer were functioning outside. Therefore, merely because the taxpayer was set up like an SPV or its ultimate shareholders were not Irish, would mean that the principal purpose of the taxpayer was to take benefit of the India-Ireland tax treaty.
- Taxpayer was a genuine Irish company
- The taxpayer was managed by a duly licensed management company, A Co, which itself was based in Ireland. The directors, bankers, company secretary and legal advisors of the taxpayer were all residents of Ireland. In the context of a leasing business, these were not mere formalities but critical elements of the operational structure. Consequently, the conclusion drawn by the AO and the DRP that the taxpayer's business was not being carried on from Ireland and that no operational structure existed in that jurisdiction, was untenable.
- The Irish entity had been established and maintained to carry out substantive commercial functions - , that it was adequately staffed with personnel, that it incurred genuine expenditure in the ordinary course of its business, and that it assumed real economic risks.
- While the quantum of tax benefit may constitute a relevant contextual circumstance, it is not by itself determinative for the purposes of the PPT. The PPT requires a clear demonstration, supported by objective facts, that the dominant purpose of the arrangement was to secure the treaty benefit and that such benefit is contrary to the object and purpose of the convention. In the present case, no such factual foundation was proved, and hence, the Revenue had not discharged this burden.
- The taxpayer's group had leased aircraft to jurisdictions other than India as well. This cross-border footprint underscores that the choice of Ireland was driven by the broader aviation ecosystem and as Ireland is a well-known leasing infrastructure, rather than by an India-specific intention to access the India–Ireland tax treaty. The geographical diversity of lessees coheres with a business model anchored in Ireland's industry depth, not in the opportunistic pursuit of a single treaty.
- Similar tax treaty outcomes are available under other Indian tax treaties for instance, with Israel,

Sweden, Greece, and the Netherlands. Yet the taxpayer's gravitation toward Ireland was credibly explained by non-tax advantages:

- an unparalleled ecosystem where 60% of the world's leased aircraft were managed,
- hosting over 50 leasing companies, including 19 of the top 20 global lessors.

The centre of gravity was commercial: Ireland's regulatory predictability, specialist talent, and deep market infrastructure not a solitary fiscal preference.

In view of the above, once the taxpayer had produced a valid TRC and the AO/ DRP had not recorded compelling grounds to rebut the applicability of the India-Ireland tax treaty, the conclusion that the principal purpose of the taxpayer incorporation was to obtain India–Ireland tax treaty benefits, was unsustainable.

Tax treaty benefit to be granted if in accordance with the object and purpose of the relevant provision

- Even under Articles 6 and 7 of the MLI, tax treaty relief may be granted notwithstanding that one of the principal purposes of an arrangement was to obtain such relief so long as the grant of relief aligns with the object and purpose of the relevant tax treaty provisions.
- PPT is not intended to deny treaty relief where the transaction is either commercially driven or squarely within the contemplated purpose of the treaty provisions.
- In the present case, under Articles 8 and 12 of the India-Ireland tax treaty [related to, inter-alia, income from aircraft business and royalty] showed that the tax treaty consciously departs from the OECD and UN Model conventions in so far as it limits the source country's taxing rights in respect of aircraft-leasing income. This represents a deliberate and considered policy choice of the two sovereign states. Hence, the very object and purpose of the tax treaty was to exclude aircraft-leasing income from source-based taxation.
- The PPT was not intended to negate tax treaty benefits that are claimed in furtherance of the very purpose for which the treaty was concluded. Articles 8 and 12 of the India-Ireland tax treaty were specifically designed to remove aircraft-leasing income from the ambit of source-country taxation. A taxpayer claiming such treaty relief is not seeking to subvert the treaty; on the contrary, it is availing a benefit that the treaty itself was designed to confer.

In view of the above, the ITAT held that the relief from source-country taxation of aircraft-leasing activity constitutes a stated and substantive object of the India–Ireland tax treaty. Accordingly, even after the PPT on account of the absence of a section 90(1) notification was not applicable, the taxpayer would in any event, be entitled to treaty protection as the relief claimed aligns with the treaty's object and purpose.

Deloitte Comments:

The earlier SC ruling in the case of Nestle SA had provided a landmark judgment wherein the contention of the Revenue was approved that MFN benefits, though provided in protocol to tax treaty, cannot be applied automatically without specific notification by the government. Going by this law laid by the SC, the ITAT in this ruling has tried to apply the same principle that application of PPT, brought into a relevant tax treaty through the MLI, cannot be applied in the tax treaty in absence of specific notification by the government in this regard.

The ITAT in this ruling has, inter-alia, held the following:

- Synthesised text which incorporates the MLI provisions into the CTA is nothing more than an expository compilation intended to facilitate understanding. In the absence of specific notification, neither the bare provisions of the MLI nor any synthesised text reflecting its intended application, can form the basis for altering the application of an already notified tax treaty.
- Articles 6 and 7 of the MLI cannot be invoked against the taxpayer, as there was no section 90(1)

notification incorporating those provisions into the India-Ireland tax treaty.

- The PPT in Articles 6 and 7 of the MLI cannot be read so broadly as to imply that treaty benefits must automatically be denied in every case where the ultimate parent entity of the taxpayer happens to be resident in a third country.
- Relief from source-country taxation of aircraft-leasing activity constitutes a stated and substantive object of the India–Ireland tax treaty. Accordingly, even after it was held that the PPT on account of the absence of a section 90(1) notification shall not be applicable, the taxpayer would, in any event, be entitled to treaty protection as the relief claimed aligns squarely with the treaty's object and purpose.

Further, on the other grounds related to formation of PE, taxation of lease income as royalty or interest, etc., the ITAT held as follows:

- Based on the true characterisation of the lease rentals the same were categorized as dry operating lease. Hence, such rental income was not to be characterized as interest income.
- Taxpayer's business of grant of lease rights was executed offshore; the asset's Indian location under I Co's aegis does not convert the aircraft into a fixed establishment at the taxpayer's disposal. Hence, there was no PE of the taxpayer under Article 5 of the India-Ireland tax treaty.
- The taxpayer's income from leasing of aircraft was held to be exempt under Article 8(1) of the India-Ireland tax treaty.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.