



PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

REPORT ON THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING



Parliamentary Paper No. 82 of 2017

May 2017

TABLE OF CONTENTS

1.0	RECOMMENDATION	v
2.0	INTRDUCTION	1
	2.1 The Standing Committee on Foreign Affairs and Defence	
	2.2 Committee Members	
	2.3 Procedure and Program	
3.0	MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING	2
	3.1 Background	
	3.2 Purpose	
	3.3 Why is it relevant?	
	3.4 Key Provisions.....	3
	Summary of the Convention.....	4
	Background	
	Part 1 - Interpretation and Terms	
	Part 2 - Hybrid Measures	
	Part 3 - Treaty Abuse.....	4-5
	Part 5 - Avoidance of Permanent Establishment Status	
	Part 6 - Arbitration.....	5-6
	Part 7 - Final Provisions	
4.0	COMMITTEE'S OBSERVATION AND AREA OF CONCERN	7
	4.1 Stakeholders Observations	
	4.2 Gender Equality	
	4.3 General Observation	
	4.4 Challenges.....	8
5.0	OPPORTUNITIES	9
	CONCLUSION	10
	CONSIDERATION OF CONVENTION ARTICLE BY ARTICLE	11

APPENDICES

- APPENDIX 1: POWERPOINT PRESENTATION
- APPENDIX 2: WRITTEN SUBMISSION
- APPENDIX 3: VERBATIM REPORT

CHAIR'S FOREWORD

I am pleased to present the report of the Standing Committee on Foreign Affairs and Defence (SCFAD), which was assigned to review and examine the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** with reservation under Article 4(3)(e) that relates to dual resident entities and more specifically tie breaker rules for companies. This Article applies to dual resident entities that are residents of more than one contracting state.

This report provides the committee's review, conclusion and recommendations from oral and written submissions received and deliberated upon by the Committee as per Standing Orders 110(e).

The report is divided into four parts:

Part 1 covers the **role and responsibilities** of the Standing Committee and the inquiry process in undertaking a review of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Part 2 provides a **brief overview** of the Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Part 3 details the Standing **Committee's observations** of the Convention.

Part 4 provides a **summary of key provisions** of the Convention.

Ratifying this Convention will be beneficial to Fiji in terms of:

- (i) increasing detection of tax avoidance, tax evasion, base erosion and profit shifting;
- (ii) enhancing greater understanding of trends and patterns of trade treaties and tax treaties;
- (iii) improving prosecution of tax evasion; and
- (iv) Improving cooperation between border security agencies, tax administration agencies, banks and financial intelligence units both nationally and internationally.

I commend this report to Parliament for its consideration.

Hon. Netani B. Rika
Chairman

LIST OF ACRONYMS

OAG	Office of the Auditor General
BEPS	Base Erosion and Profit Shifting
CTA	Covered Tax Agreement
DTA	Double Tax Agreement
G20	Group of 20 Developed Economies
FIU	Financial Intelligence Unit
FTR Act	Financial Transactions Reporting Act
FRCA	Fiji Revenue Customs Authority
LOB	Limitation on Benefit
MCTT BEPS	Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion And Profit Shifting
MITT	Ministry of Industry Trade and Tourism
MLI	Multilateral Instrument
MNEs	Multi National Enterprise
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
RBF	Reserve Bank of Fiji
SO	Standing Orders
USP	University of the South Pacific

1.0 RECOMMENDATION:

The Committee recommends that Parliament ratify the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting with reservation under Article 4(3)(e).

2.0 INTRODUCTION

The Parliament Standing Committee on Foreign Affairs and Defence undertook a review of the proposal by the Government of the Republic of Fiji to ratify the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

2.1 The Standing Committee on Foreign Affairs and Defence

The Standing Committee is established under Standing Order 109(2)(e) of the Parliament of the Republic of Fiji. It is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

Under SO 110(1)(e) the Committee is also tasked with reviewing international treaties and conventions ratified by the Government and monitor their implementation.

The Committee comprises of five Members of Parliament drawn from both sides of the House.

2.2 Committee Members

The members of the Standing Committee on Foreign Affairs and Defence are:

- 2.2.1 Hon. Netani Rika (Chairman)
- 2.2.2 Hon. Howard Politini
- 2.2.3 Hon. Alexander O'Connor
- 2.2.4 Hon. Mosese Bulitavu
- 2.2.5 Hon. Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115(5):

- 2.2.6 Hon. Jilila Kumar

2.3 Procedure and Program

The Committee placed advertisements in the *Fiji Sun* and the *Fiji Times* from the 8th May to 18th May 2017. The advertisement was also placed on the Parliament website: (www.parliament.gov.fj).

The Committee received oral submissions on the Convention in the Parliament Complex from relevant stakeholders during 9th May to 18th May 2017.

3.0 MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

3.1 Background

On 27th April 2017, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting was referred to SCFAD for its deliberation.

Under section 51 of the Constitution, “an international treaty or convention binds the State only after it has been approved by Parliament.”

3.2 Purpose

The main purpose of the Convention is to curb global problem of tax avoidance and tax evasion through Base Erosion and Profit Shifting experienced in industrialised countries but also for emerging economies and developing countries through the modifications of trade and tax treaties.

3.3 Why is it relevant?

Base Erosion and Profit Shifting (BEPS) occurs when tax planning strategies that exploit gaps and mismatches in tax rules are used to artificially shift profits to low or no tax locations where there is little or no economic activity, resulting in little or no corporate tax being paid .¹

For this reason, a large group of countries, including G20 and developing countries, as well as the Organisation for Economic Co-operation and Development (OECD) have developed a comprehensive package of effective measures against BEPS.²

Following the agreement of this package, a group of countries developed the Multilateral Convention to Implement Trade Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Convention) to ensure coordination and consistency in the implementation of the BEPS measures which require modification to trade treaties.³

The Convention aims to enable the maximum number of tax treaties to be updated without separate bilateral negotiations, so as to manage time and administration costs, as well as prevent inconsistent implementation.

The Convention is also designed to be flexible to encourage participation. It is therefore includes a number of optional provisions, as well as the ability for signatories to express reservations in respect of many provisions.

The text of the Convention was adopted on 24 November 2016.⁴

¹ Solicitor-General Office Analysis on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting: 2017.

² *ibid*

³ *ibid*

⁴ *ibid*

3.4 Key Provisions

3.4.1 The Convention modifies all Covered Tax Agreements in a synchronised and efficient manner to implement the tax treaty measures developed during the BEPS project.⁵

3.4.1.1 The term “Covered Tax Agreement” (CTA) means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):

(i) that is in force between two or more:

(a) parties and/ or;

(b) jurisdictions or territories which are parties to an agreement described above and for whose international relations a party is responsible; and

(ii) with respect to which each such party has made a notification to the Depositary listing the Agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by the Convention.

⁵ ibid

Summary of the Convention

Background

3.4.2 The Convention contains 39 Articles which are in 7 different parts.⁶ The Convention is intended to enable the implementation of the treaty related recommendations of four BEPS action items across multiple tax treaties without separate re-negotiation. The substantive provisions of the Convention are divided into seven main parts:

Part 1 - Interpretation and Terms

3.4.2.1 Part 1 relates to the scope and interpretation of terms and features Articles 1 and 2.⁷

3.4.2.2 Article 1 defines the scope of the Convention whereby it modifies all CTAs and Article 2 defines significant terms used in the Convention.⁸

Part 2 - Hybrid Measures

3.4.2.3 Article 3 addresses transparent jurisdiction and extends the scope of the CTA on what can be taxed.

3.4.2.4 Article 4 addresses dual resident entities and sets out the rules to be applied in determining residence.

3.4.2.5 Article 5 relates to methods for the elimination of double taxation where deductions from taxes on income and capital for their residents are allowed only to the amount equal to what has been paid in other Contracting Jurisdiction but this will not exceed part of tax before deduction is given.

3.4.2.6 The term "Contracting Jurisdiction" means a party to a CTA.

Part 3- Treaty Abuse

3.4.2.7 Comprise of Articles 6 to 11. Article 6 addresses the purpose of a CTA. It endeavours to modify a CTA by providing for the inclusion of a preamble text.

3.4.2.8 Article 7 addresses situations of treaty abuse and developed rules on how these can be prevented.

3.4.2.9 Article 8 governs dividend transfer transactions. In this Article, if there are signs of manipulating the percentage of rights or shares or voting power held in the company paying the dividend throughout the 365 days, the taxpayer will not be entitled to the treaty benefit which is of a reduced rate or exemption as specified in our various CTAs.

⁶ ibid
⁷ ibid
⁸ ibid

- 3.4.2.10** Article 9 addresses capital gain made from alienation of shares or interests. This Article amends Article 13(4) of the OECD Model Tax Convention on Income and on Capital 2014 (OECD model). It deals with gains derived from the alienation of shares connected to immovable property.
- 3.4.2.11** Article 10 sets out the anti-abuse rules for permanent establishment situated in third jurisdictions. It addresses triangular transactions and which jurisdiction has the taxing right.
- 3.4.2.12** Article 11 sets out the application of tax agreements to restrict a party's right to tax its own residents.

Part 4 – Avoidance of Permanent Establishment Status

- 3.4.2.13** Comprises Articles 12 to 15. Article 12 addresses the artificial avoidance of permanent establishment status through commissionaire (agents) arrangement.
- 3.4.2.14** Article 13 addresses artificial avoidance of permanent establishment through specific activity exemptions.
- 3.4.2.15** Article 14 relates to splitting up of contracts. For instance, if an entity conducts business in Fiji in fragmented days but the total number of days present in Fiji is more than 183 days in aggregate, the entity will be recognised as having a permanent establishment for tax purposes.
- 3.4.2.16** Article 15 describes conditions under which a person will be considered to be closely related to an enterprise.

Part 5 - Improving Dispute Resolution

- 3.4.2.17** Comprise of Articles 16 to 17. Article 16 sets out the procedures to be followed to be mutually agreed by the competent authorities of the Contracting Jurisdiction. Article 17 relates to corresponding adjustments to enterprise profits.

Part 6 – Arbitration

- 3.4.2.18** Comprise of Articles 18 to 26. Article 18 allows a party to make a choice to apply Part 6 in respect of the CTAs.
- 3.4.2.19** Article 19 addresses mandatory binding arbitration and sets out detailed rules.
- 3.4.2.20** Article 20 governs appointment of arbitrators. The arbitration is composed of 3 individual members; 2 members are experts from the competent authorities of the contracting state whilst the 3rd member is an independent expert who is not a national or resident of the contracting state and will serve as chair of the arbitration panel. If the 2 members fail to appoint the independent member within a specified time frame, the highest ranking official of the Centre for Tax Policy and Administration of the OECD will appoint the independent member.

3.4.2.21 Article 21 relates to confidentiality of arbitration proceedings. Article 22 addresses resolution of a case before conclusion of arbitration. Article 23 sets out the types of arbitration process. Article 24 governs agreement on a different resolution. Article 25 relates to costs of arbitration proceedings. Article 26 is the compatibility clause which describes interactions between provisions of Part 6 and provisions of the CTAs.

Part 7 - Final Provisions

3.6.2.22 Part 7 comprise of Articles 27 to 39 and provides for administrative matters such as signature, reservation and timing of reservation, notification, modification of CTAs, implementation, amendments, entry into force, withdrawal and depository.⁹

3.6.2.23 Reservation is made to Article 4 (3) (e) that relates to dual resident entities and more specifically tie breaker rules for companies. This Article applies to dual resident entities that are residents of more than one contracting state.

⁹ *ibid*

4.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

4.1 Stakeholders Observation

Submissions were received from relevant stakeholders on the Convention and the overwhelming majority were for ratification.

4.2 Gender Equality

The Parliament of Fiji Standing Orders 110(2) specifically states that a committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. The Committee is satisfied that the matters considered in this report will impact both women and men equally and as such, ratifying will not have an adverse impact on gender equality.

4.3 General Observation

4.3.1 Positive Aspects of the Convention to Fiji

- 4.3.1.1** Benefits for tax administration agencies, law enforcement agencies and border control agencies and relevant stakeholders.
- 4.3.1.2** Strengthening Better Intelligence Gathering and Sharing amongst Stakeholders
- 4.3.1.3** Enhance the use of appropriate technology to mitigate gaps in tax administration agencies, central banks and border control.
- 4.3.1.4** Tertiary institutions such as the University of the South Pacific develop and introduce a course focusing on specialised tax auditing.
- 4.3.1.5** FRCA, Office of the Auditor General and Reserve Bank to focus specialised forensic accounting and tax audit training for tax auditors.
- 4.3.1.6** FRCA and FIU focus on tax auditing to ensure that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.
- 4.3.1.7** Adapt and amend laws and policies to international standards

4.4 Challenges

- 4.4.1** Fiji Revenue & Customs Authority (FRCA), Office of the Auditor General, Reserve Bank of Fiji, Financial Intelligence Unit, University of the South Pacific and the Solicitor General's Office shared the same concern during their submissions that there is a need to strengthen collective collaboration in terms of information sharing amongst private, public sectors and tax administration agencies and border control agencies.
- 4.4.2** There is a need in the improvement of the existing operational systems by the introduction of new equipment and technology to enhance the FRCA, RBF and FIU capabilities in securing our Taxation Base, Banks, Financial and Capital Markets.
- 4.4.3** Enhance capacity building by introducing tax audit units in the local University's accounting, taxation and financial administration curriculum.
- 4.4.4** Enhance training with foreign counterparts in tax administration, tax auditing and border control to identify, monitor and detect local and foreign currency illegally taken out of the country through the airports and ports of entry.

5.0 OPPORTUNITIES

- 5.1** The ratification of the Convention will help bring Fiji's laws and practice in line with international standards.
- 5.2** Being a part of this Convention will promote certainty and predictability in laws, policies, best practices and work ethics to fight Base Erosion and Profit Shifting (BEPS) with local and international partners for current and future transnational organized trends in tax avoidance and tax evasion.
- 5.3** The Convention is highly relevant to Fiji especially with the robust dispute resolution mechanism (such as Compulsory Arbitration) as this will have a positive impact on Fiji's Foreign Direct Investment and International trade flows.

CONCLUSION

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting will ensure Fiji's laws and practices are aligned to global standards to fight and curb Base Erosion and Profit Shifting. The Committee has put forward observations and recommendations to Parliament for the ratification of the Convention and this will help Fiji establish its arrangements with other jurisdictions about where and how to tax people, organisations and the multinational corporations who have dual resident entities¹⁰.

¹⁰ Article 4(3)(e)

CONSIDERATION OF CONVENTION ARTICLE BY ARTICLE

The Committee considered the Convention Article by Article and agreed with the Articles as summarized below:

A copy of the Convention is attached as Appendix B.
