



THE NATIONAL ASSEMBLY OF SEYCHELLES

REPORT OF THE INTERNATIONAL AFFAIRS COMMITTEE

ON THE

Multilateral Convention Implementing Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

(Submitted for Ratification as per Article 64 (4) of the Constitution)

The Committee has considered this Multilateral Convention and presents its report thereon to the 7th Assembly. This is the International Affairs Committee's 9th report on international agreements, laid before the Assembly in accordance with Article 64 (4) of the Constitution of the Third Republic of Seychelles.

The International Affairs Committee (IAC), has the parliamentary responsibility for scrutinizing all international agreements submitted to the National Assembly by Recommendation of the President of the Republic of Seychelles.

This report addresses this Convention, that has been reviewed and considered at a meeting of the IAC on Tuesday 19th October 2021 with the Assistance of the Department of Finance represented by the *Secretary of State for Finance, Mr. Patrick Payet, Ms. Bryna Felix – Senior Policy Analyst and Ms. Elle Cafrine – Policy Analyst*

THE INTERNATIONAL AFFAIRS COMMITTEE is mandated to address any topic associated with the national foreign service of Seychelles, the conduct of tourism, international affairs and of international parliamentary affairs as per its Terms of Reference.

Powers

The Committee is a Select Sessional Committee, the powers of which are set out in the National Assembly Standing Orders, 2020, principally, SO 88-92.

Committee Staff

The Committee is assisted by the following Parliamentary Staff of the Secretariat:
Ms. Alexandria Faure (Secretary) and Mrs. Nada Delafontaine (Secretary Assistant)

Contact

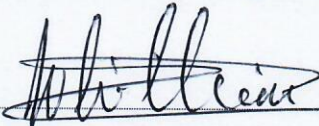
All correspondence should be addressed to the *Secretary of the International Affairs Committee, The National Assembly of Seychelles, Ile Du Port, PO Box 734.*

The Committee's email address is iac@nationalassembly.sc

The telephone number for general enquiries is +248 428 5600.

The following Members of the International Affairs Committee undersigned, submit this Report dated Thursday 18th November 2021:

Hon. Waven William
Chairperson



Hon. Wavel Woodcock
Vice-Chairperson

Hon. Egbert Aglae
Member



Hon. Kelly Samynadin
Member

Hon. Wallace Cosgrow
Member



Hon. Philip Monthy
Member



Hon. Philip Arissol
Member



1 SYNOPSIS OF THE CONVENTION AND CONTENTS

- 1.1** The Committee recognizes that the Convention, which is also known as the MLI is an International Collaboration of 140 countries and jurisdictions to end tax avoidance.
- 1.2** The Committee notes that the Convention is to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). According to OECD the BEPS refers to the planning strategies of tax used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax.
- 1.3** The Committee notes that according to OECD the work on BEPS focuses largely on legal tax planning techniques rather than offshore tax evasion. However, other work being carried out by the OECD and the OECD Global Forum on Transparency and the Exchange of Information is focused on combating offshore tax evasion.
- 1.4** The Committee recognizes that the Convention ensures the implementation of multilateral measures, it notes the need to ensure that the existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements 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 those agreements for the indirect benefit of residents of third jurisdictions.
- 1.5** The Committee recognizes that the Government of the Republic of Seychelles has implemented a list of measures related to the Covered Tax Agreement which will be put in force.
- 1.6** The Committee notes that the Convention makes provisions for 39 detailed articles which entails the scope of the instrument as described below, however for all articles a party reserves the right for the entirety of the articles not to apply to their covered tax agreements.
- 1.7** Seychelles signed the MLI in order to be able to amend its Double Taxation Avoidance Agreements (DTAAs), given that the signing of the MLI means implementing the standards of the BEPS Package which will strengthen the existing DTAAs with our treaty partners, also signatories to the MLI Convention and without having to amend them bilaterally.

2 MAIN DISCUSSION POINTS & CONCERNS

2.1 Overview and Importance of the MIL

The delegation from the Ministry of Finance briefed the Committee on the MLI and its importance. The IAC was informed that the reservations that the Seychelles has made is not permanent and that once the MLI is ratified it will bring the existing Double Taxation Avoidance Agreements (DTAAs) up to par with the measures in the Convention, which aims to prevent double taxation and discourage treaty shopping.

The IAC was informed that the MLI is a multinational Convention which allows countries to swiftly modify their existing bilateral tax treaties in a synchronized and efficient manner to implement the measures of the OECD/G20 BEPS project, without the need to expend resources renegotiating each treaty bilaterally.

SS Payet and Ms. Felix highlighted to the Committee that the Seychelles signed the MLI in order to be able to amend its Double Taxation Avoidance Agreements (DTAAs), given that the signing of the MLI means implementing the standards of the BEPS Package which will strengthen the existing DTAAs with the treaty partners of Seychelles.

SS Payet confirmed that Seychelles has signed 33 DTAAs of which 4 are yet to enter into force. Further to this, it was confirmed that the tax treaties listed in the Seychelles' MLI Position are with the following jurisdictions:

Entered into Force:

Bahrain, Barbados, Belgium, Bermuda, Botswana, China, Cyprus, Ethiopia, Guernsey, Indonesia, Isle Of Man, Jersey, Kenya, Kuwait, Luxembourg, Malaysia, Mauritius, Monaco, Oman, Qatar, San Marino, Singapore, South Africa, Sri Lanka, Swaziland (now Eswatini), Thailand, United Arab Emirates, Vietnam and Zambia.

Yet to Enter into Force:

Ghana, Lesotho, Malawi and Zimbabwe.

2.2 What is BEPS?

The IAC enquired on the definition of the BEPS, which is a central aspect of the Convention. In addition, the delegation highlighted to the IAC that the Base Erosion and Profit Shifting refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity, resulting in little or no overall corporate tax being paid.

The project brought about a 15-point Action Plan to address base erosion and profit shifting primarily by MNEs.

2.3 Does Seychelles have the capacity to handle the new measures that will have to be implemented?

The Members of the Committee were concerned as to whether Seychelles has the capacity to implement the measures that will have to be implemented as a result of the ratification of the MLI. The Delegation expressed that most Small Island Developing States (SIDS) face challenges in managing the resources required to handle the short time frames and new measures required. SS Payet expressed certain resources such as an efficient IT system which could address certain constraints and technical assistance has also been explored.

Ms. Felix confirmed that once the instrument of ratification shall be deposited with the OECD. It is only then that the MLI begins to take effect with respect to the Covered Tax Agreements.

2.4 How will the MLI impact Seychelles?

The IAC was informed that the MLI will sit on top of all of Seychelles' DTAAAs (listed under Article 2 of the MLI), whether they currently are or will enter into force. Ms. Felix explained that once a DTAA has been listed by its two treaty partners under Article 2, it becomes a '*Covered Tax Agreement*'. For the modifications made by the MLI to have effect with respect to each of Seychelles' existing DTAAAs, both parties to the treaty will have to ratify the MLI in accordance with their domestic procedures and have listed each other under the Covered Tax Agreements.

The MLI will modify DTAAAs that are Covered Tax Agreements by implementing the following treaty-related minimum standards of the BEPS project for which Seychelles has made notifications:

i. Action 6 - Treaty abuse (Articles 6 – 7 of the MLI)

The Republic Of Seychelles chooses to apply Article 6 and 7 to its Covered Tax Agreements, thereby implementing Action 6 of the BEPS package.

For Action 6, The Republic Of Seychelles has chosen to apply the Principal Purpose Test (PPT) only; instead of a PPT and a simplified LOB provision; or a detailed LOB provision supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties.

3 RESERVATIONS

The IAC recognises the efforts of Seychelles in implementing measures to be in line with OECD and supports the ratification of the Convention. The IAC makes known 12 reservations as per the **Status of List of Reservations and Notifications upon Deposit of the Instrument of Ratification of the Republic of Seychelles.**

Article 3 – Transparent Entities

Reservation

Pursuant to Article 3(5)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 3 not to apply to its Covered Tax Agreements.

Article 4 – Dual Resident Entities

Reservation

Pursuant to Article 4(3)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 4 not to apply to its Covered Tax Agreements.

Article 5 – Application of Methods for Elimination of Double Taxation

Reservation

Pursuant to Article 5(8) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 5 not to apply with respect to all of its Covered Tax Agreements.

Article 8 – Dividend Transfer Transactions

Reservation

Pursuant to Article 8(3)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 8 not to apply to its Covered Tax Agreements.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

Reservation

Pursuant to Article 9(6)(a) of the Convention, **The Republic Of Seychelles** reserves the right for Article 9(1) not to apply to its Covered Tax Agreements.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

Reservation

Pursuant to Article 10(5)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 10 not to apply to its Covered Tax Agreements.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents

Reservation

Pursuant to Article 11(3)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 11 not to apply to its Covered Tax Agreements.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

Reservation

Pursuant to Article 12(4) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 12 not to apply to its Covered Tax Agreements.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

Reservation

Pursuant to Article 13(6)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 13 not to apply to its Covered Tax Agreements.

Article 14 – Splitting-up of Contracts

Reservation

Pursuant to Article 14(3)(a) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 14 not to apply to its Covered Tax Agreements.

Article 15 – Definition of a Person Closely Related to an Enterprise***Reservation***

Pursuant to Article 15(2) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 15 not to apply to the Covered Tax Agreement to which the reservations described in Article 12(4), Article 13(6)(a) or (c), and Article 14(3)(a) apply.

Article 17 – Corresponding Adjustments***Reservation***

Pursuant to Article 17(3)(b) of the Convention, **The Republic Of Seychelles** reserves the right for the entirety of Article 17 not to apply to its Covered Tax Agreements on the basis that in the absence of a provision referred to in Article 17(2) in its Covered Tax Agreement:

- i) it shall make the appropriate adjustment referred to in Article 17(1); or
- ii) its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure.

Article 35 – Entry into Effect***Reservation***

Pursuant to Article 35(6) of the Convention, **The Republic Of Seychelles** reserves the right for Article 35(4) not to apply with respect to its Covered Tax Agreements.