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# Switching On the PPT: India’s ITAT on SC Lowy & Sky High Leasing

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## India’s Early Jurisprudence on the PPT

India has unexpectedly become the first country in the world to produce judicial decisions applying the OECD’s principal purpose test (PPT). Both first known rulings — the Delhi tribunal’s SC Lowy decision in 2024[1] and the Mumbai tribunal’s *Sky High Leasing Ireland* decision in 2025[2] — have come from India’s Income Tax Appellate Tribunal. If the PPT were a new medicine, then India would be the jurisdiction volunteering for early-stage clinical trials.

The first judicial application of the PPT arose in *SC Lowy* before the Delhi ITAT in 2024. The taxpayer, a Luxembourg company registered in India as a foreign portfolio investor, claimed benefits under the India-Luxembourg double taxation avoidance agreement (DTAA) on interest, capital gains, and business income. Revenue argued that the entity was a mere conduit interposed to obtain treaty benefits, pointing to its Cayman Islands parent and alleging lack of economic substance in Luxembourg.

The tribunal, however, allowed treaty relief. It held that possession of a valid tax residency certificate was prima facie evidence of Luxembourg residence and emphasized that the taxpayer incurred regular operational expenses on legal, banking, accounting, and advisory services in Luxembourg, which demonstrated a level of real activity beyond a “letterbox” company. In addition, over 85 percent of its investment portfolio was located outside India, undermining the claim that it was a special- purpose shell set up solely for India-related tax benefits. The tribunal underscored that Revenue must establish that obtaining treaty benefits was one of the principal purposes of the arrangement and that granting the benefit would frustrate the object and purpose of the treaty. On the facts, this threshold was not met, and treaty relief was upheld.

The decision, widely regarded as the world’s first PPT case, signaled that Indian tribunals would approach the new antiabuse rule with caution, weighing tax considerations against commercial substance and legitimate cross-border investment activity. Building on this approach, the Mumbai ITAT in *Sky High Leasing Ireland (2025)* was asked to apply the PPT again but this time the tribunal layered the commercial-substance analysis of *SC Lowy* with an additional constitutional dimension — whether the PPT itself could operate domestically without a section 90 notification.

## Sky High Leasing

In *Sky High Leasing* Revenue sought to deny treaty relief under article 8 of the India-Ireland double tax agreement by invoking the PPT introduced through the OECD multilateral instrument.[3] The case arose in the aircraft leasing sector, of which Ireland is the global hub. The tribunal ruled for the taxpayer, holding that the PPT could not override the exemption from source-based taxation of lease rentals. Two reasons were central.

## Domestic Notification Requirement

The ITAT held that although the MLI had been ratified, its provisions, including the PPT, cannot operate

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domestically unless expressly incorporated by notification under section 90(1) of the Income Tax Act, 1961. This reasoning followed the supreme court's judgment in *Union of India v. Nestlé SA (2023)*,[4] in which the court ruled that a most favored nation clause could not be invoked without this notification.

**Consistency With Treaty Purpose**

The tribunal also reasoned that even if the PPT applied, article 8 benefits could not be denied because they were consistent with the treaty's object and purpose. The India-Ireland DTA deliberately (i) excluded aircraft lease rentals from the definition of royalties under article 12, and (ii) allocated taxation of these rentals exclusively to the residence state. These were negotiated provisions designed to encourage aircraft leasing in India, not accidental loopholes.

The earlier *SC Lowy* ruling showed similar pragmatism. While tax efficiency may have been one of the taxpayer's purposes, that alone did not make the arrangement abusive when genuine commercial reasons also existed. Together, these cases suggest that Indian tribunals will apply the PPT cautiously. On one hand, under the base erosion and profit-shifting action 6, India has committed to implementing effective antiabuse provisions[5] across its treaty network.[6] On the other, tribunals are mindful of the need to protect certainty for bona fide cross-border business.

**Comparative Jurisprudence on Treaty Abuse**

To appreciate the distinctiveness of India's approach, it is useful to contrast it with how other jurisdictions address treaty abuse:

- **European Union.** In 2019 the EU's Court of Justice decided the "Danish cases" — T Danmark and *Y Denmark alongside N Luxembourg 1 and others* — which established a general antiabuse principle rooted in beneficial ownership. Benefits under the parent–subsidiary and interest-royalty directives were denied if intermediary companies were mere conduits.[7]
- **Canada.** Canadian courts have taken a more restrained view. In MIL (Investments) (2007) and *Alta Energy Luxembourg* (2021), treaty benefits were upheld because reliance on the treaty was consistent with its negotiated text and purpose.[8]
- **United States.** The United States has long employed its "conduit" doctrine. In *Aiken Industries* (1971) the Tax Court denied benefits when a Honduran intermediary was used solely to access a lower Swiss rate on interest payments. Treasury regulations later codified this principle, disregarding intermediaries with no commercial function.[9]
- **United Kingdom.** The United Kingdom pioneered purposive antiavoidance with *Ramsay* (1982), which allowed courts to disregard steps lacking commercial substance. This approach was later formalized in the general antiavoidance rule in 2013, with the GAAR advisory panel reinforcing the focus on substance.[10]

There is evident convergence in the jurisprudence above. Substance and purpose matter more than legal form, and divergence lies in thresholds: EU law demands substance, Canada emphasizes certainty, the United States targets conduits but respects explicit bargains, and the United Kingdom applies purposive GAAR principles robustly. India adds its own twist: PPT enforcement is tied not just to substance but also to the constitutional ritual of section 90[11] notification. This reflects India's dualist constitutional framework; treaties require legislative or delegated implementation to take effect domestically.

Comparatively, this looks unusual. In the United States, treaties are generally self-executing once ratified and published.[12] In the United Kingdom, treaties require an Order in Council but no further notifications.[13] Monistic jurisdictions like France or the Netherlands treat treaties as directly applicable upon ratification.[14] Even Canada, though dualist, incorporates treaties into law through the Income Tax Conventions Implementation Act, without requiring additional notifications.[15] Thus, while Nestlé is correct under Indian law, it looks different globally, because most countries treat ratification and publication as sufficient.

**Was the Nestlé Doctrine Overextended?**

Let's examine the supreme court decision in Nestlé, in which the court ruled taxpayers could not invoke MFN clauses unless the government had issued a notification under section 90(1). ITAT flagged the

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Revenue's contradictory stand in Sky High when extending the MFN logic to the PPT, a benefit-denying antiabuse rule forming part of the OECD's base erosion and profit-shifting project's minimum standards.[16] This logic may be debatable:

- **Nestlé was an MFN case**. MFN benefits *expand* a taxpayer's entitlements, so an additional domestic act of incorporation was needed before those new benefits could be claimed.
- **The PPT is different.** It is a *benefit-denying antiabuse* rule mandated by BEPS action 6 minimum standards that narrows access to treaty relief. It is perhaps conceptually unsound to extend the same notification requirement to a provision that restricts benefits, because this defeats India's international commitment to implement effective antiabuse rules.
- **The court in Nestlé never held that all MLI provisions need notification.** The supreme court confined itself to MFN clauses; it did not discuss antiabuse measures like the PPT. It can be argued that PPT provisions are self- executing once the MLI is ratified and effective, especially in light of Central Board of Direct Taxes (CBDT) Circular No. 1 of 2025.[17]

### Judicial Vulnerabilities in Sky High Leasing

### MFN vs. PPT, Antiabuse, and Minimum Standards

The ITAT's decision has several vulnerabilities. The supreme court's ruling applied to MFN clauses — benefit-granting provisions in which notification arguably ensures clarity. Extending the same logic to the PPT — a benefit-denying antiabuse rule forming part of BEPS minimum standards[18] — may be unsound and debatable because of the factual differences between DTA agreements and the BEPS minimum standard, particularly as it relates to notification requirements.

### Differences Between DTAs and BEPS Minimum Standard

The ITAT assumed that notification is required for both MFN and PPT. Yet MFN clauses are dynamic, benefit-conferring provisions; PPT is static, benefit-denying, and multilateral.

Perusal of the differences below will show why equating them arguably overextends Nestlé.

    - **Bilateral vs. Multilateral Nature:**
        - DTAAs are bilateral treaties, negotiated on a country-by-country basis, with specific terms and rates that reflect individualized bargaining and diplomatic priorities.
        - The BEPS minimum standard (including the PPT) is a multilateral commitment. The MLI overlays antiabuse provisions onto existing treaties, standardizing abuse deterrence across dozens of jurisdictions simultaneously.
    - **Purpose and Operative Effects:**
        - MFN clauses in DTAA's are benefit- granting, allowing taxpayers to claim more favorable terms if India's treaty partner later agrees to better treatment with a third country, and require notification to ensure clarity and legal certainty for both taxpayers and authorities.
        - The PPT under BEPS is benefit-denying and antiabuse; it restricts access to treaty benefits if arrangements are tax-motivated and lack genuine substance, functioning as a floor (minimum safeguard) for treaty integrity intended to take effect automatically with MLI ratification
- **Dynamic External Reference vs. Internal Safeguard:**

MFN clauses are dynamic; their operation depends on developments and legal changes in other, external treaties. Notification ensures the Indian Notification ensures the Indian government can control and clarify which external terms become operative, based on evolving international relationships

The PPT is an internal, standardized rule. Its scope and effects do not depend on changes in third-party treaties but arise from a unified policy objective agreed under BEPS (OECD/G20 framework). It is intended as a universal antiabuse rule, not as a selective or discretionary benefit tied to case-by-case government action.

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Signatory states need to implement the PPT consistently to avoid undermining the multilateral goal of combating treaty shopping and tax avoidance.

Perusal of the above will show why the need for notification of MFN clauses is distinguishable from PPT. MFN benefits depend on dynamic external treaty relationships. In contrast, the PPT is intended as a safeguard against treaty abuse, and it reflects a binding international obligation under the OECD/G20 inclusive framework that operates as a minimum standard for treaty integrity, not as a taxpayer benefit triggered by external treaty actions. Therefore, applying the MFN-based notification requirement to the PPT arguably overextends the judicial logic from a benefit-conferral context to one of antiabuse, which could conflict with both the letter and spirit of international commitments under BEPS.

**CBDT Circular No. 1 of 2025**

A further weakness in the tribunal's reasoning lies in its failure to give weight to CBDT Circular No. 1 of 2025,[19] which explicitly states that the MLI entered into force for India on October 1, 2019, and that the PPT applies to covered treaties in accordance with article 35 of the MLI. By insisting on a section 90 notification as a precondition, the ITAT effectively subordinated this explicit administrative guidance to its reading of the supreme court's judgment in Nestlé. A release clarification dated March 15, 2025, shows CBDT itself confined Circular 01/2025 to PPT (not MFN). While courts are correct that circulars cannot override binding judicial precedent, the tribunal's approach risks being seen as disregarding both the government's express position and India's treaty obligations under the MLI.

**Treaty Override by MLI**

The MLI is a multilateral treaty ratified by India. Ratification itself modifies covered treaties, and section 90 notification is procedural, not substantive. Leading commentary emphasizes that the PPT is designed to be effective upon ratification and entry into force of the MLI, not contingent on further domestic notification. On this view, the ITAT's insistence on notification undermines India's obligations under the Vienna Convention on the Law of Treaties (article 26, pacta sunt servanda)[20] that establishes that parties cannot invoke domestic law to justify nonperformance of treaty obligations.

**Narrow View of Purpose**

The ITAT found that article 8 relief was consistent with treaty purpose. Yet the PPT does not require inconsistency with treaty purpose alone; it applies if one of the principal purposes of an arrangement is to secure a tax benefit, unless saved by object and purpose. Routing leasing through Ireland, with significant tax advantages, arguably meets this test regardless of Ireland's industry role. OECD commentary confirms that commercial rationale does not prevent PPT application if a tax benefit is also a principal driver.[21]

**Insufficient Analysis of Substance**

The tribunal accepted Ireland's hub status and outsourcing as normal industry practice. The Irish lessor used special purpose vehicles (SPVs) that were bankruptcy remote, managed cash flows, and did not hire their own staff but were serviced administratively by employees of the parent lessor. These SPVs did not maintain their own substantive payroll, nor did they independently operate staff or offices in India. Instead, any back- office and operational tasks were performed by personnel of the parent group or through service agreements. Revenue questioned whether substance in these SPVs should be considered passthrough or proxy entities, suggesting that they functioned as mere conduits rather than truly independent lessors — exactly the concern raised by BEPS antiabuse standards. But these were rejected by ITAT based on the sector's global practice and the legitimate commercial rationale recognized under the India-Ireland DTA agreement. This decision overlooks BEPS's focus on substance and value creation. European cases like the Danish cases denied benefits to entities with no personnel or activity, even when outsourcing was common.

**Risk of Double Nontaxation**

A further concern with the ITAT's reasoning is that it risks facilitating outcomes of double nontaxation. The OECD's commentary on article 29 and the BEPS action 6 final report make clear that the object and

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purpose of tax treaties is to prevent double taxation without creating opportunities for nontaxation or reduced taxation through treaty shopping. By treating article 8 relief as automatically consistent with treaty purpose, and by rendering the PPT dormant absent section 90 notification, the tribunal's approach may allow lease rentals to escape taxation both in India (source) and, effectively, in Ireland (residence, given the availability of exemptions or low effective tax rates). Such results sit contrary to the OECD's interpretive guidance, which views double nontaxation as contrary to treaty purpose.

Importantly, CBDT Circular No. 01/2025 had already clarified that the PPT applies to India's treaty network from October 1, 2019, in line with article 35 of the MLI, precisely to ensure that abusive structures do not exploit treaties to achieve double nontaxation. By disregarding this guidance, the ITAT's approach not only departs from India's executive position but also risks placing India in breach of its BEPS action 6 minimum standard commitments.

**Ignoring BEPS Commitments**

ITAT's narrow reading undermines India's action 6 commitments. Courts should interpret PPT provisions in line with international consensus, not restrict them through domestic technicalities. Peer reviews may flag this as noncompliance.[22]

**Policy Implications for India's BEPS Compliance**

Under BEPS action 6, countries must implement "effective antiabuse rules" in all treaties.[23] India's section 90(1) process and article 253 empower Parliament and the executive to give treaties domestic effect; however, if courts extend Nestlé to the PPT, India risks potentially failing BEPS action 6 peer review. The ITAT has now placed the burden on the legislature and executive to resolve this tension, either through notifications operationalizing the MLI or through further statutory clarification.

The way forward may be to distinguish MFN (benefit-expanding) from PPT (benefit- restricting). Once India ratifies the MLI, the PPT is automatically part of the bilateral treaty text with another state. There is no external reference point requiring administrative confirmation. Nestlé applies narrowly to MFN clauses (which require external administrative recognition), while PPT provisions — being directly negotiated and ratified — are self-executing once the MLI enters into force. Courts could uphold constitutional consistency while still giving effect to India's international commitments. This would reassure investors, satisfy OECD peers, and respect constitutional requirements.

**Conclusion: A Cautionary Tale**

India's first-mover status in PPT jurisprudence is more than a curiosity. More jurisdictions will soon face their first PPT cases. India's experience shows the challenge of balancing fidelity to international commitments with domestic constitutional discipline. Globally, the lesson is clear — don't underestimate the power of domestic plumbing. Even the most sophisticated global tax reforms can be tripped up not by treaty text, but by how, and whether, a government chooses to switch them on. Or, to put it humorously: In the world of international taxation, the OECD may write the elegant recipe, but each country still decides whether to turn on the oven.

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[1] SC Lowy P.I. (Lux) S.A.R.L. v. Assistant Commissioner of Income Tax. [TS-972-ITAT-2024(DEL)]

[2] Sky High Leasing Ireland and Ors. v. DCIT, ITA No. 1198/Mum/2025 (ITAT Mumbai Aug. 13, 2025) [TS-1085-ITAT-2025(Mum)].

[3] OECD, "Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" (2015).

[4] Union of India v. Nestlé SA, Civil Appeal No. 1420 of 2023 (India S.C. Oct. 19, 2023) [TS-616-SC-2023].

[5] OECD, "Commentary on the PPT Rule in Action 6 Final Report," paras. 9-14 (2015).

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[6] India-Ireland DTA, arts. 8, 12.

[7] Denmark v. T Danmark, joined cases C-116/16 and C-117/16 (2019); N Luxembourg 1 v. Denmark, joined cases C-115/16, C-118/16, C-119/16, and C-299/16.

[8] MIL (Investments) S.A. v. The Queen, 2007 FCA 236; Canada v. Alta Energy Luxembourg S.A.R.L., 2021 SCC 49.

[9] 9 Aiken Industries v. Commissioner, 56 T.C. 925, 933 (1971); reg. section 1.881-3; T.D. 8611, 1995-1 C.B. 147. But see also, e.g., Northern Indiana Public Service Co. v. Commissioner, 115 F.3d 506, 512 (7th Cir. 1997).

[10] W.T. Ramsay Ltd. v. IRC, [1982] A.C. 300 (HL); Finance Act 2013, pt. 5 (U.K. GAAR); HMRC GAAR Guidance (2023).

[11] Section 90(1) of the Income Tax Act 1961 read with India Const. art. 253: "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

[12] Whitney v. Robertson, 124 U.S. 190 (1888); Restatement (Third) of Foreign Relations Law, section 111

[13] Constitutional Reform and Governance Act 2010 (U.K.), c. 25.

[14] French Constitution, art. 55; Netherlands Constitution, art. 93.

[15] Income Tax Conventions Implementation Act, R.S.C. 1985, c. I-4 (Can.).

[16] OECD, "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report" (2015); see also OECD/G20 Inclusive Framework on BEPS, "Review of the Minimum Standard on Treaty Shopping (Action 6)" (2019-2023). BEPS action 6 established a "minimum international standard" to fight against tax treaty shopping, in particular by proposing to add article 29(9) of the OECD model (the so-called PPT) to tax treaties.

[17] CBDT Circular No. 01/2025; see also CBDT Release Clarification on Circular No. 01/2025.

[18] OECD, supra note 16; see also OECD/G20 Inclusive Framework on BEPS, "Review of the Minimum Standard on Treaty Shopping (Action 6)" (2019-2023).

[19] CBDT Circular No. 01/2025 (Jan. 21, 2025), supra note 17. The circular clarifies that for withholding taxes, the PPT applies from the first fiscal year beginning after entry into force, and for other taxes, from taxable periods beginning six months thereafter. In effect, the CBDT has formally acknowledged that the PPT is operational in India's treaty network, subject only to limited exceptions for treaties such as those with Mauritius, Cyprus, and Singapore.

[20] Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, art. 26 (May 23, 1969).

[21] OECD, "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting," art. 7(1) (2017).

[22] OECD, supra note 16.

[23] OECD, "Commentary on the PPT Rule in Action 6 Final Report," paras. 9-14 (2015).

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