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Global Tax Alert

68 jurisdictions sign the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*

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Executive summary

On 7 June 2017, 68 jurisdictions signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI) during a signing ceremony hosted by the Organisation for Economic Co-operation and Development (OECD) in Paris. Eight other jurisdictions expressed their intent to sign the MLI in the near future. The signing ceremony marks another key milestone in the Base Erosion and Profit Shifting (BEPS) project, in particular with respect to the implementation of the treaty-related BEPS minimum standards. At the time of signature, signatories submitted a list of their tax treaties in force that they would like to designate as Covered Tax Agreements (CTAs), i.e., to be amended through the MLI. At this stage, it is expected that over 1,100 tax treaties will be modified based on matching the specific provisions that jurisdictions wish to add or change within the CTAs nominated by the signatories.

Together with the list of CTAs, signatories also submitted a preliminary list of their reservations and notifications (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI. The OECD has published on its website the list of signatories and country-specific files containing an overview of the CTAs and reservations and notifications as filed as of 7 June by those countries.

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Furthermore, as part of the options contained in the MLI, jurisdictions can opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Of the 68 jurisdictions that signed the MLI, 25 opted in for mandatory binding arbitration.

Detailed discussion

Background

In October 2015, the OECD released the final reports on the 15 action items of the BEPS Action Plan. The final reports contained recommendations that fall into different categories ranging from minimum standards, reinforced international standards and common approaches.

Some of the recommendations target domestic rules, while others target tax treaty provisions – namely, some of the recommendations in Action 2 on hybrid mismatches, Action 6 on treaty abuse, Action 7 on permanent establishment, and Action 14 on dispute resolution. To enable jurisdictions to swiftly and consistently implement the treaty-based recommendations, the final report on Action 15 analyzed whether a multilateral instrument was feasible. The final report concluded that it was not only feasible but also desirable, and, in light of this, a mandate was issued to create an ad hoc group to develop the MLI.

Under the mandate, the MLI was developed and agreed in November 2016.[1] The MLI was developed by approximately 100 jurisdictions including OECD member countries, G20 countries and other developed and developing countries. However, it is open for signature to any interested jurisdictions.

Furthermore, the MLI also includes a section that enables jurisdictions to include mandatory binding treaty arbitration in their tax treaties in accordance with the special procedures provided by the MLI. Unlike the other articles of the MLI, this section applies only between jurisdictions that expressly choose to apply mandatory binding arbitration with respect to their tax treaties.[2]

Although the MLI has been open for signature since 1 January 2017, this is the first time that countries have signed the instrument. The OECD will host a second signing ceremony later this year.

Signatories and options

During the first signing ceremony, 68 jurisdictions[3] signed the MLI and 8 other jurisdictions[4] signed a letter expressing their intent to sign the MLI. In the frequently asked questions on the MLI, the OECD has indicated that the 68 signatories listed a total of 2,362 unique treaties in their MLI positions out of which 1,103 treaties will be modified based on matching the specific provisions that signatories wish to add or change within the CTAs nominated by them.

Furthermore, 1,149 additional treaties between Signatories and non-Signatories have been listed. Hence, as more jurisdictions sign the MLI in the coming months, the number of matched agreements should increase.

The MLI positions provided at the time of signature for the jurisdictions may be subject to change. Importantly, the definitive MLI position for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI.

Moreover, 25 signatories[5] signed up for mandatory binding arbitration. The OECD expects that this provision will apply to more than 150 existing tax treaties.

In the frequently asked questions on the MLI, the OECD has indicated that based on the choices made by the signatories, the Principal Purpose Test (PPT)[6] will apply to all 1,100 treaties currently covered by the MLI. 12 signatories have chosen to supplement the provisions of the PPT with a simplified Limitation on Benefits test, including Argentina, Armenia, Bulgaria, Chile, Colombia, India, Indonesia, Mexico, Russia, Senegal, Slovak Republic and Uruguay.

Implications

The expectation that 1,100 tax treaties would be modified as a result of 68 jurisdictions signing the MLI constitutes an unprecedented moment in international taxation. It is also a key milestone in the implementation of the treaty-based BEPS recommendations.

The MLI will enter into force after five jurisdictions have deposited its instrument of ratification, acceptance or approval of the MLI. During the ratification process the choices made by jurisdictions may still change. With respect to a specific bilateral tax treaty, the measures will only enter into effect after both parties to the treaty have deposited its instrument of ratification, acceptance or approval of the MLI and a specified time has passed. The specified time differs for different provisions. For example, for provisions relating to withholding taxes, the entry into force date is the 1 January of the following year after the last party has notified of its ratification. It is possible that the changes made as a result of being a party to the MLI would be effective in 2019, though some tax treaties may be affected as early as sometime in 2018.

Endnotes

1. See EY Global Tax Alert, *OECD releases multilateral instrument to implement treaty related BEPS measures on hybrid mismatch arrangements, treaty abuse, permanent establishment status and dispute resolution*, dated 2 December 2016.
2. See EY Global Tax Alert, *Mandatory Binding Treaty Arbitration under OECD's Multilateral Instrument*, dated 2 December 2016.
3. Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and Uruguay.
4. Cameroon, Cote d'Ivoire, Estonia, Jamaica, Lebanon, Mauritius, Nigeria and Tunisia.
5. Andorra, Australia, Austria, Belgium, Canada, Fiji, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malta, the Netherlands, New Zealand, Portugal, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.
6. See EY Global Tax Alert, *OECD releases final report under BEPS Action 6 on preventing treaty abuse*, dated 20 October 2015.

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