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Global Tax Alert

Signing by 68 jurisdictions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS highlights impacts for business to consider

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Executive summary

On 7 June 2017, 68 jurisdictions signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) during a signing ceremony[1] 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. Norway did not submit its MLI positions at the time of the signing ceremony.[2]

The MLI is designed to allow modifications to tax treaties between two or more parties. It will not however, function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the tax treaty. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the Base Erosion and Profit Shifting (BEPS) measures.

At the time of signature, signatories submitted a list of their tax treaties in force that they 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. Both the number of jurisdictions and the number of CTAs designated are anticipated to grow over time, with Pascal Saint-Amans, the Director of the OECD's Centre for Tax Policy and Administration noting at the signing ceremony that he expects 20 to 25 additional jurisdictions to sign the MLI during the remainder of the calendar year.

Building a better working world

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.

Detailed discussion

Background

On 5 October 2015, the OECD released its final report on developing an MLI to modify bilateral tax treaties under its BEPS Action Plan (Action 15). This report was released in a package that included final reports on all 15 BEPS Actions.

The tax treaty related BEPS measures covered by the MLI include (elements of): (i) Action 2 on hybrid mismatch arrangements; (ii) Action 6 on treaty abuse; (iii) Action 7 on the artificial avoidance of the permanent establishment (PE) status; and (iv) Action 14 on dispute resolution. The substance of the tax treaty provisions relating to these actions was agreed under the final BEPS package released in October 2015. The MLI does not modify or add to the substance of these provisions. The MLI is solely focused on how to modify the provisions in bilateral or regional tax treaties in order to align these treaties with the BEPS measures.

The only action for which the negotiations both related to developing the substance of the provision and the modalities of its implementation in bilateral and regional tax treaties, concerns the mandatory and binding arbitration provision which was announced in the Action 14 final report. A group of 20 jurisdictions expressed their willingness to voluntarily include mandatory and binding arbitration in their existing tax treaties at the time of conclusion of the Action 14 final report. Eventually, 27 jurisdictions participated in the subgroup which developed this provision and 25 jurisdictions chose to include this option when signing the MLI on 7 June.

One of the primary aims of the MLI is to enable all jurisdictions to meet the treaty-related minimum standards that were agreed as part of the final BEPS package. These include the minimum standard for the prevention of treaty abuse under Action 6 and the minimum standard for the improvement of dispute resolution under Action 14. Given, however, that each of those minimum standards can be satisfied in multiple different ways and given the broad range of jurisdictions involved in the negotiations, the MLI was designed to be flexible enough to accommodate the positions of different jurisdictions. The MLI is also drafted to provide flexibility in relation to provisions that do not reflect minimum standards.

The MLI provides that flexibility by:

- Allowing jurisdictions to specify the tax treaties to which the MLI applies
- Creating flexibility with regard to the provisions that relate to a minimum standard, in order to allow countries to choose for the option that fits them best
- Including the possibility to opt out of provisions when the provisions do not relate to a minimum standard
- Including the possibility to opt out of provisions for treaties with existing provisions with specific, objectively defined characteristics
- Allowing a choice to apply optional or alternative provisions, such as for example the optional provision on mandatory and binding arbitration

Since 2015, the MLI has been developed via negotiations involving more than 100 jurisdictions including OECD member countries, G20 countries and other developed and developing countries, under a mandate delivered by G20 Finance Ministers and Central Bank Governors at their February 2015 meeting. The text of the MLI and explanatory notes are available on the OECD website.[3]

The 7 June 2017 MLI signing ceremony marks another key milestone in the 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 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.

This Tax Alert provides summary information on the preliminary list of MLI positions. Additional information on MLI positions relating to each article of the MLI is available in an appendix to this alert.

The first modifications to bilateral tax treaties are expected to enter into effect in early 2018. However, given the anticipated time needed for ratification, it is expected that most treaty changes will enter into effect in 2019.

Structure of the MLI

The MLI is made up of 39 articles contained in seven sections (parts) as follows:

- Part I: Scope and interpretation of terms
- Part II: Hybrid mismatches
- Part III: Treaty abuse
- Part IV: Avoidance of permanent establishment status
- Part V: Improving dispute resolution
- Part VI: Arbitration
- Part VII: Final provisions

Mechanics of the MLI

Recognizing the complexity of designing a general instrument that applies to the CTAs and to the specific provisions included in bilateral tax treaties, the MLI provides flexibility for Contracting Jurisdictions to implement parts of the MLI based on their needs.

Many of the provisions of the MLI overlap with provisions already found in CTAs. Where the provisions of the MLI may conflict with existing provisions covering the same subject matter, this conflict is addressed through one or more compatibility clauses which describe the impact of the MLI on these existing provisions. The MLI may, for example, describe the existing provisions on a specific subject which the MLI is intended to supersede, as well as the effect on CTAs that do not contain a provision of the same type. In the latter case, the MLI may allow for the MLI provision to be introduced in the treaty.

Jurisdictions have the right to reserve certain parts of the MLI (a reservation or opt-out) and to have these specific articles not apply to their tax treaties. However, once a jurisdiction has ratified the MLI, reservations cannot be introduced or broadened. Reservations may be withdrawn or limited both before and after ratification. New jurisdictions may also enter the MLI in the future and existing jurisdictions may nominate additional CTAs for inclusion in the MLI.

The different types of provisions

The MLI contains four types of provisions. Depending on the type of provision, the interaction with CTAs varies. A provision can have one of the following formulations: (i) "in place of"; (ii) "applies to"; (iii) "in the absence of"; and (iv) "in place of or in the absence of."

A provision that applies "in place of" an existing provision is intended "to replace an existing provision" if one exists and is not intended to apply if no existing provision exists. Parties shall include in their MLI positions a section on notifications wherein they will list all CTAs that contain a provision within the scope of the relevant MLI provision, indicating the article and paragraph number of each of such provision. A provision of the MLI that applies "in place of" shall replace a provision of a CTA only where all Contracting Jurisdictions have made a notification with respect to that provision.

A provision that "applies to" provisions of a CTA is intended "to change the application of an existing provision without replacing it," and therefore may only apply if there is an existing provision. Parties shall include in their MLI positions a section on notifications wherein they will list all CTAs that contain a provision within the scope of the relevant MLI provision, indicating the article and paragraph number of each of such provision. A provision of the MLI that "applies to" provisions shall change the application of a provision of a CTA only where all Contracting Jurisdictions have made a notification with respect to that provision.

A provision that applies "in the absence of" provisions of a CTA is intended "to add a provision" if one does not already exist. Parties shall include in their MLI positions a section on notifications wherein they will list all CTAs that does not contain a provision within the scope of the relevant MLI provision. A provision of the MLI that applies "in the absence of" provisions shall apply only in cases where all Contracting Jurisdictions notify the absence of an existing provision of the CTA.

A provision that applies "in place of or in the absence of" provisions of a CTA is intended "to replace an existing provision or to add a provision." This type of provision will apply in all cases in which all the parties to a CTA have not reserved their right for the entirety of an article to apply to its CTAs. If all Contracting Jurisdictions notify the existence of an existing provision, that provision will be replaced by the provision of the MLI to the extent described in the relevant compatibility clause. Where the Contracting Jurisdictions do not notify the existence of a provision, the provision of the MLI will still apply. If there is a relevant existing provision which has not been notified by all Contracting Jurisdictions, the provision of the MLI will prevail over that existing provision, superseding it to the extent that it is incompatible with the relevant provision of the MLI (according to the explanatory statement of the MLI, an existing provision of a CTA is considered "incompatible" with a provision of the MLI if there is a conflict between the two provisions). Lastly, if there is no existing provision, the provision of the MLI will, in effect, be added to the CTA.

Minimum standard provisions

One of the main purposes of the MLI is to enable countries to meet the treaty related minimum standards that were agreed as part of the final BEPS package, which are the minimum standard for the prevention of treaty abuse under Action 6 and the minimum standard for the improvement of dispute resolution under Action 14. Those minimum standards can be satisfied in different ways.

For the minimum standard provisions, the right to opt-out only exists to the extent the CTA already includes a similar minimum standard.

Where a minimum standard can be satisfied in multiple alternative ways, the MLI does not give preference to a particular way of meeting the minimum standard.

Other provisions

The MLI is drafted to provide flexibility in relation to provisions that do not reflect minimum standards. Those provisions include the articles relating to hybrid mismatches (Articles 3, 4 and 5 of the MLI) and the provisions tackling the avoidance of permanent establishment status (Articles 12, 13, 14 and 15 of the MLI). Also, some of the articles relating to the prevention of treaty abuse (Articles 8, 10 and 11 of the MLI) are not considered to be minimum standard provisions.

A jurisdiction may reserve the right to opt-out of the other provisions and to not apply these articles to its tax treaties or to a subset of its tax treaties.

For some specific articles, Contracting Jurisdictions may choose different options resulting in an asymmetrical application of these provisions

Summary of jurisdiction MLI positions

For the purposes of this Alert, summary information in relation to MLI positions is set forth below. For more detailed information, the appendix to this Alert should be accessed.

Part / Article	Provision	MLI positions[i]
Part II: Hybrid mismatches Article 3 – Transparent entities[ii]	Income derived by or through an entity that is treated as wholly or partly transparent under the tax law of either Contacting Jurisdiction shall only be considered income of a resident to the extent that the income is treated, for purposes of taxation by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction.	▸ 43 jurisdictions have reserved the right for the entirety of Article 3 to not apply to their CTAs. ▸ Article 3(1) and 3(2) of the MLI would apply in respect of matching CTAs of the remaining 24 jurisdictions that have submitted their MLI positions. However, jurisdictions can make other reservations with respect to Article 3(1) and 3(2). ▸ 16 jurisdictions did not make any reservation with respect to Article 3. ▸ 3 jurisdictions made a reservation under Article 3(5)(b); 2 made a reservation under Article 3(5)(d). 4 jurisdictions have reserved their right not to apply Article 3(2).

i. A detailed appendix to this Alert provides further details of the provisions and MLI positions, including the names of jurisdictions.

ii. Article 3 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 3 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

Part / Article	Provision	MLI positions
Part II: Hybrid mismatches Article 4 – Dual resident entities[iii]	Under this provision, treaty residency of a dual resident entity shall be determined by a mutual agreement procedure (MAP) between Contracting Jurisdictions. Under the MAP in Article 4, Contracting Jurisdictions are not obligated to successfully reach an agreement and in absence of a successful mutual agreement, a dual resident entity is not entitled to any relief or exemption from tax provided by the CTA except as may be agreed upon by the Contracting Jurisdictions.	▸ 40 jurisdictions have reserved the right for the entirety of Article 4 not to apply to their CTAs. ▸ The remaining 27 jurisdictions that did not make the above reservation can reserve their right for the entirety of Article 4 not to apply to their CTAs when a CTA already contains a tie-breaker rule that is within the scope of the selected reservation. ▸ 18 jurisdictions did not make any reservation in respect to Article 4.
Part II: Hybrid mismatches Article 5 – Application of methods for elimination of double taxation[iv]	Article 5 includes three options for Contracting Jurisdictions for the methods of eliminating double taxation. Option A provides that provisions of a CTA that would otherwise exempt income derived or capital owned by a resident of a Contracting Jurisdiction would not apply where the other Contracting Jurisdiction applies the provisions of the CTA to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed (switch over clause). Instead, a deduction from tax is allowed subject to certain limitations. Under option B, Contracting Jurisdictions would not apply the exemption method with respect to dividends if those dividends are deductible in the other Contracting Jurisdiction. Option C includes that the credit method should be restricted to the net taxable income. Contracting Jurisdictions may choose different options resulting in an asymmetrical application of this provision. Contracting Jurisdictions may also opt not to apply Article 5 to one or more of their CTAs.	▸ 30 jurisdictions have reserved the right for the entirety of Article 5 not to apply to their CTAs. ▸ 5 jurisdictions have chosen to apply option A. ▸ None of the signatories chose to apply option B. ▸ 9 jurisdictions have chosen to apply option C. ▸ 23 jurisdictions did not exercise any option with respect to Article 5.

iii. Article 4 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 4 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

iv. Options A and B of Article 5 of the MLI "*apply to*" provisions of a CTA and option C of Article 5 of the MLI applies "*in place of*" an existing provision. Article 5 of the MLI is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this option entirely.

Part / Article	Provision	MLI positions
Part III: Treaty abuse Article 6 – Purpose of a CTA[v]	Article 6 contains the proposal described in the Action 6 final report to change the preamble language of a CTA to ensure compliance with one of the requirements of the minimum standard consisting of expressing the common intention to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. Article 6 also includes optional wording that may be added to the preamble of a CTA referring to the desire to develop an economic relationship or to enhance cooperation in tax matters.	▸ 10 jurisdictions have reserved their right not to apply this article to its CTAs that already contain preamble language within the scope of the reservation. ▸ The remaining 57 jurisdictions did not make any reservation in respect to Article 6. ▸ 41 jurisdictions have chosen to include the additional optional preamble language.
Part III: Treaty abuse Article 7 – Prevention of treaty abuse[vi]	The provision states that the prevention of treaty abuse should be addressed in one of the following ways: (i) a combined approach consisting of a Limitation on Benefits (LOB) provision and a Principal Purpose Test (PPT); (ii) a PPT alone; or (iii) an LOB provision, supplemented by specific rules targeting conduit financing arrangements. With respect to the LOB provision, the Action 6 report provided for the option of including a detailed or a simplified version. Given that a PPT is the only way that a Contracting Jurisdiction can satisfy the minimum standard on its own, it is presented as the default option in Article 7. Parties are allowed to supplement the PPT by electing to also apply a simplified LOB provision.	▸ All jurisdictions will be required to adopt a PPT as part of the minimum standard. ▸ 12 jurisdictions have in addition chosen to apply a simplified LOB provision. ▸ 26 jurisdictions have chosen to allow for the optional inclusion of a discretionary relief provision when treaty benefits are denied under the PPT.
Part III: Treaty abuse Article 8 – Dividend transfer transactions[vii]	Anti-abuse rules for benefits provided to dividend transfer transactions consisting of exempting or limiting the tax rate on dividends paid by a company resident of a Contracting Jurisdiction to a beneficial owner or recipient that is resident of the other Contracting Jurisdiction, provided certain ownership requirements which need to be met throughout a 365 day period that includes the day of payment of the dividend are met. The 365 day holding period will apply in place of or in the absence of a minimum holding period contained in the provisions described above.	▸ 44 jurisdictions have reserved the right for the entirety of Article 8 not to apply to its CTAs. ▸ 23 jurisdictions did not make any reservation with respect to Article 8.

v. Article 6 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 6 is a provision required to meet a minimum standard and therefore jurisdictions cannot opt out of this article, unless they reserve the right for this article not to apply to its CTAs that already contain preamble language within the scope of the reservation.

vi. The PPT rule (in Article 7(1)) and the simplified LOB (in Article 7(8) to 7(13)) provisions in Article 7 of the MLI apply "*in place of or in the absence of*" an existing provision. Article 7 is a provision required to meet a minimum standard and therefore jurisdictions cannot opt out of this article, unless they reserve the right for this article not to apply to its CTAs that already contain preamble language within the scope of the reservation. Further, the additional option in Article 7(4) of the MLI "*applies to*" provisions of a CTA.

vii. Article 8 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 8 is not a provision required to meet a minimum standard and therefore jurisdictions may opt out of the article entirely.

Part / Article	Provision	MLI positions
Part III: Treaty abuse Article 9 – Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property[viii]	Anti-abuse rule with respect to capital gains realized from the sale of shares of entities deriving their value principally from immovable property. This article provides two conditions to be incorporated into a CTA. Such conditions would require meeting a relevant value threshold at any time during the 365 days preceding the sale and would require that the rule is expanded to apply to shares or comparable interests such as interests in a partnership or trust. The article provides that the 365 day period will replace or add such minimum period in CTAs, unless a Party wishes to preserve the minimum period specified in its CTAs.	▸ 36 jurisdictions have reserved the right for the entirety of Article 9 not to apply to its CTAs. ▸ 8 jurisdictions have made other reservations with respect to this article. ▸ 23 jurisdictions did not make any reservation in respect to Article 9. ▸ 28 jurisdictions have chosen to include the option in Article 9(4) to their CTAs.
Part III: Treaty abuse Article 10 – Anti-abuse rule for permanent establishments situated in third jurisdictions[ix]	Anti-abuse rule for PEs situated in third jurisdictions, the so-called "triangular provision." Treaty benefits will be denied if an item of income derived by a treaty resident and attributable to a PE in a third jurisdiction, is exempt from tax in the residence state and the tax in the PE jurisdiction is less than 60% of the tax that would be imposed in the residence state if the PE were located there.	▸ 46 jurisdictions have reserved the right for the entirety of Article 10 not to apply to its CTAs. ▸ 2 jurisdictions have made other reservations with respect to this article. ▸ 19 jurisdictions did not make any reservation with respect to Article 10.
Part III: Treaty abuse Article 11 – Application of tax agreements to restrict a party's right to tax its own residents[x]	Article 11 contains a so-called "saving clause" that clarifies that a treaty does not restrict a jurisdiction's right to tax its own residents, except with respect to certain treaty provisions.	▸ 46 jurisdictions have reserved the right for the entirety of Article 11 not to apply to its CTAs. ▸ 3 jurisdictions have made other reservations with respect to this article. ▸ 18 jurisdictions did not make any reservation with respect to Article 11.

viii. Article 9 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 9 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

ix. Article 10 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 10 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

x. Article 11 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 11 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

Part / Article	Provision	MLI positions
Part IV: Avoidance of permanent establishment status Article 12 – Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies[xi]	Article 12 sets out how the changes to the wording of Article 5 of the OECD Model Tax Convention to address the artificial avoidance of PE status through commissionaire arrangements and similar strategies can be incorporated in the CTAs specified by the Parties.	▸ 39 jurisdictions have reserved the right for the entirety of Article 12 not to apply to its CTAs. ▸ 28 jurisdictions did not make any reservation with respect to Article 12.
Part IV: Avoidance of permanent establishment status Article 13 – Artificial avoidance of permanent establishment status through the specific activity exemptions[xii]	Article 13 addresses the artificial avoidance of PE status through the specific activity exemptions included in Article 5(4) of the OECD Model Tax Convention. Action 7 recommended that this exemption should only be available if the specific activity listed is of a preparatory or auxiliary character (option A). However, there were some jurisdictions that had concerns with this view and considered that these specifically listed activities are intrinsically preparatory or auxiliary and therefore, there should be no need to subject these activities to the preparatory or auxiliary condition (option B). Moreover, Article 13(4) of the MLI contains an anti-fragmentation clause that will apply to provision of a CTA unless a Party reserves the right for the anti-fragmentation clause to apply.	▸ 26 jurisdictions have reserved the right for the entirety of Article 13 (i.e., option A or B and the anti-fragmentation clause) to apply to its CTAs. ▸ 4 jurisdictions have reserved the right for the anti-fragmentation clause to not apply to its CTAs. ▸ 31 jurisdictions have chosen to apply option A of Article 13 to its CTAs. ▸ 7 jurisdictions have chosen to apply option B of Article 13 to its CTAs. ▸ 3 jurisdictions did not exercise any option in respect to Article 13.
Part IV: Avoidance of permanent establishment status Article 14 – Splitting-up of contracts[xiii]	Article 14 contains an anti-contract splitting rule which would apply to deemed PE provisions (e.g., building sites, construction or installation projects). For the purposes of assessing whether the specified time period to constitute a deemed PE has been exceeded, connected activities which are carried on by closely related persons at the same site or project during different periods of time that each exceed 30 days must be added to the aggregate period of time that a foreign resident enterprise has also carried on activities at that site or project.	▸ 44 jurisdictions have reserved the right for the entirety of Article 14 not to apply to its CTAs. ▸ 7 jurisdictions have reserved the right for the anti-contract splitting rule not apply with respect to provisions of their CTAs relating to the exploration for or exploitation of natural resources. ▸ 16 jurisdictions did not make any reservation with respect to Article 14.

xi. Article 12 of the MLI applies "*in place of*" an existing provision. Article 12 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

xii. Options A and B of Article 13 of the MLI apply "*in place of*" provisions of a CTAs and the anti-fragmentation clause in Article 13(4) of the MLI "applies to" an existing provision. Article 13 of the MLI is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

xiii. Article 14 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 14 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this article entirely.

Part / Article	Provision	MLI positions
Part IV: Avoidance of permanent establishment status Article 15 – Definition of a person closely related to an enterprise[xiv]	Article 15 defines when a person is closely related to an enterprise for the purposes of Articles 12, 13 and 14 of the MLI.	▸ 30 jurisdictions have reserved the right for the entirety of Article 15 not to apply to its CTAs.
Part V: Improving dispute resolution Article 16 – Mutual Agreement Procedure[xv]	Article 16's objective is to improve dispute resolution, making it more effective. The article aims to ensure the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the MAP. Article 16 of the MLI requires countries to include in their tax treaties the provisions regarding the MAP of Article 25 paragraph 1 through paragraph 3 of the OECD Model Tax Convention, including certain modifications of those provisions.	▸ Article 16 is a provision required to meet a minimum standard and therefore jurisdictions cannot opt out of this article. ▸ 24 jurisdictions have reserved the right for the first sentence of Article 16(1) not to apply to its CTAs. ▸ 5 jurisdictions have reserved the right for the second sentence of Article 16(2) not to apply to its CTAs.
Part V: Improving dispute resolution Article 17 – Corresponding adjustments[xvi]	Article 17 aims to add or replace treaty provisions enabling Contracting Jurisdictions to provide for a corresponding adjustment and it is necessary for the competent authorities of the Contracting Jurisdictions to consult to determine the appropriate amount of that corresponding adjustment with the aim of avoiding double taxation, countries should provide access to MAP.	▸ 6 jurisdictions have reserved the right for the entirety of Article 17 to apply. ▸ 35 jurisdictions have reserved their right for the entirety of Article 17 not to apply to their CTAs that already contain a provision within the scope of the reservation.
Part VI: Arbitration Articles 18 to 26 – Mandatory binding arbitration[xvii]	Articles 18 to 26 aim to implement mandatory binding arbitration, reflecting the commitment by some countries to provide for mandatory binding arbitration in their bilateral tax treaties.	▸ 25 jurisdictions opted in for mandatory binding arbitration. ▸ 7 jurisdictions reserve the right for the default arbitration mode ("best or final" offer approach) not to apply and therefore elect independent opinion arbitration.

xiv. Article 15 defines when a person is closely related to an enterprise for the purposes of Articles 12, 13 and 14 of the MLI, jurisdictions that have made a reservations under these articles, may reserve their right for the entirety of Article 15.

xv. The first sentence of paragraph 1 of Article 16 applies "*in place of or in the absence of*" provisions of a CTA; the second sentence of paragraph 1 of Article 16 shall apply "*in place of*" provisions of a CTA; and the first and second sentence of paragraph 2 and 3 of Article 16 apply "*in the absence of*" a provision of a CTA. Article 16 is a provision required to meet a minimum standard and therefore jurisdictions cannot opt out of this article. However, jurisdictions can implement the relevant element of the minimum standard through administrative measures and thus a Party may reserve the right for the first and/or second sentence of Article 16(1) not to apply to its CTAs.

xvi. Article 17 of the MLI applies "*in place of or in the absence of*" an existing provision. Article 17 is not a provision required to meet a minimum standard and therefore jurisdictions can opt out of this Article entirely. However, Action 14 minimum standard requires that jurisdictions provide access to the MAP in transfer pricing cases and implement the resulting mutual agreements regardless of whether the tax treaty contains a provision modelled after Article 9(2) of the OECD Model Tax Convention. A Party may reserve the right not to apply paragraph 1 only on the basis that in the absence of the provisions described in Article 17(2) in CTAs, either (i) the Party making the reservation will make the adjustment as referred to in Article 17(1); or (ii) its competent authority will endeavor to resolve a transfer pricing case under the MAP provision of its tax treaty.

xvii. Article 18 to 26 of the MLI apply "*in place of or in the absence of*" an existing provision. Article 18 to 26 are optional provisions and therefore jurisdictions wanting to apply these articles need to opt in for this.

The above information describes the provisions in summary form only and has been prepared for general informational purposes only. It is not intended to be relied upon as accounting, tax or other professional advice.

Next steps – timing

The MLI is a key part of the OECD's effort toward implementation of the recommended BEPS measures. 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, on 7 June 2017 signatories also submitted a preliminary list of their reservations and notifications 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 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 withholdinsg taxes, the entry into force date is the 1 January of the following year after the last party has notified of its ratification.

The first modifications to bilateral tax treaties are expected to enter into effect in early 2018. However, given the anticipated time needed for ratification, it is expected that most treaty changes will enter into effect in 2019.

Implications

The expectation that 1,100 tax treaties will 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. That number is also expected to rise during the course of 2017 and beyond, with Pascal Saint-Amans, the Director of the OECD's Centre for Tax Policy and Administration noting at the signing ceremony that he expects 20 to 25 additional jurisdictions to sign the MLI during the remainder of the calendar year.

While the definitive MLI positions for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI, relevant information that enables companies to assess current position in relation to the BEPS minimum standards now exists and such assessment should be carried out in a thorough but time sensitive manner.

It should be noted that, because during the ratification procedures the decisions of countries in relation to their rights to reserve on certain parts of the MLI (a reservation or opt-out) may change and because additional countries are expected to sign the MLI, the current MLI positions as stated in this alert and its appendix represent a relevant starting point for an analysis, but not a reference framework that reflects the final situation. Future developments will have to be tracked in order to guarantee the latest status in relation to a specific CTA.

EY is currently preparing additional analysis on MLI positions for future issuance.

Endnotes

1. See EY Global Tax Alert, *68 jurisdictions sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 7 June 2017.
2. Norway did not submit its MLI position at the time of signature but will make its positions available as soon as it has submitted the MLI to the Norwegian Parliament in line with the required procedures in Norway.
3. See http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf.

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Appendix

Part / Article	MLI positions
Part II: Hybrid mismatches Article 3 – Transparent entities	▸ 43 jurisdictions have reserved the right for the entirety of Article 3 to not apply to their CTAs. The jurisdictions are Austria, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Isle of Man, Italy, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Malta, Pakistan, Portugal, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovenia, Sweden and Switzerland. ▸ Article 3(1) and 3(2) of the MLI would apply in respect of matching CTAs of the remaining 24 jurisdictions that have submitted their MLI positions. These are Andorra, Argentina, Aiurmenia, Australia, Belgium, Chile, Fiji, Ireland, Israel, Japan, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Poland, Romania, Russia, Slovakia, South Africa, Spain, Turkey, United Kingdom and Uruguay. Nevertheless, jurisdictions can reserve their right for Article 3(1) to not apply to their CTAs when a CTA already contains a provision that is within the scope of the selected reservation. ▸ 4 jurisdictions have reserved their right not to apply Article 3(2), namely Ireland, Japan, Luxembourg and the United Kingdom. ▸ Article 3(3) of the MLI would apply with respect to any CTA for which one or more parties to that CTA have made the reservation contained in Article 11(3)(a) and provided that one or more of the parties have not reserved the right for the entirety of the Article 3 to apply. 10 jurisdictions have made the reservation in Article 11(3)(a) and have not reserved their right for the entirety of Article 3 to apply, namely, Ireland, Israel, Japan, Luxembourg, Monaco, Netherlands, South Africa, Spain, Turkey and Uruguay. ▸ 16 jurisdictions did not make any reservation with respect to Article 3, namely Andorra, Argentina, Armenia, Belgium, Fiji, Israel, Mexico, Monaco, New Zealand, Poland, Romania, Russia, Slovakia, South Africa, Turkey and Uruguay.
Part II: Hybrid mismatches Article 4 – Dual resident entities	▸ 40 jurisdictions have reserved the right for the entirety of Article 4 not to apply to their CTAs. These include Andorra, Austria, Belgium, Bulgaria, Burkina Faso, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, Isle of Man, Italy, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Pakistan, Portugal, San Marino, Seychelles, Singapore, Spain, Sweden, Switzerland and Turkey. ▸ The remaining 27 jurisdictions that did not make the above reservation (namely, Argentina, Armenia, Australia, China, Colombia, Costa Rica, Egypt, Fiji, India, Indonesia, Ireland, Israel, Japan, Mexico, Monaco, Netherlands, New Zealand, Poland, Romania, Russia, Senegal, Serbia, Slovakia, Slovenia, South Africa, United Kingdom and Uruguay) can reserve their right for the entirety of Article 4 not to apply to their CTAs when a CTA already contains a tie-breaker rule that is within the scope of the selected reservation. ▸ 18 jurisdictions did not make any reservation in respect to Article 4, namely Argentina, Armenia, China, Colombia, Egypt, India, Israel, Monaco, Netherlands, New Zealand, Poland, Senegal, Serbia, Slovakia, Slovenia, South Africa, United Kingdom and Uruguay.

Part / Article	MLI positions
Part II: Hybrid mismatches Article 5 – Application of methods for elimination of double taxation	▸ 30 jurisdictions have reserved the right for the entirety of Article 5 not to apply to their CTAs. The jurisdictions are Bulgaria, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Isle of Man, Italy, Jersey, Korea, Latvia, Malta, Pakistan, Russia, San Marino, Serbia, Seychelles, Singapore, South Africa, Sweden and Turkey. ▸ 5 jurisdictions have chosen to apply option A, namely, Austria, Liechtenstein, Luxembourg, Netherlands and Switzerland. ▸ None of the signatories chose to apply option B. ▸ 9 jurisdictions have chosen to apply option C, namely, Argentina, Gabon, Poland, Portugal, Romania, Senegal, Slovakia, Spain and Uruguay. ▸ A Party that does not choose to apply option C can reserve the right with respect to one or more identified CTAs or with respect to all of its CTAs, not to permit other Contracting Jurisdictions to apply option C. Liechtenstein, Luxembourg and Switzerland have made this reservation. ▸ 23 jurisdictions did not exercise any option in respect to Article 5. These include Andorra, Armenia, Australia, Belgium, Burkina Faso, Chile, China, Colombia, Egypt, Fiji, Finland, Georgia, Germany, Ireland, Israel, Japan, Kuwait, Lithuania, Mexico, Monaco, New Zealand, Slovenia and the United Kingdom.
Part III: Treaty abuse Article 6 – Purpose of a CTA	▸ 10 jurisdictions have reserved their right not to apply this Article to its CTAs that already contain preamble language within the scope of the reservation, namely, Argentina, Bulgaria, Chile, Germany, Hong Kong, Japan, Luxembourg, Mexico, Senegal and Spain. ▸ The remaining 57 jurisdictions did not make any reservation with respect to Article 6. ▸ 41 jurisdictions have chosen to include additional preamble language, namely Andorra, Argentina, Australia, Belgium, Chile, China, Costa Rica, Croatia, Cyprus, Egypt, Fiji, France, Georgia, Greece, Hong Kong, Hungary, Ireland, Japan, Kuwait, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Netherlands, Pakistan, Romania, Russia, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, Turkey, United Kingdom and Uruguay.
Part III: Treaty abuse Article 7 – Prevention of treaty abuse	▸ 12 jurisdictions have chosen to apply a simplified LOB provision, namely, Argentina, Armenia, Bulgaria, Chile, Colombia, India, Indonesia, Mexico, Russia, Senegal, Slovakia and Uruguay. ▸ 7 jurisdictions have included in their positions a Statement of Acceptance of the PPT as an interim measure, including, Canada, Chile, Colombia, Kuwait, Poland, Senegal and Seychelles. ▸ 26 jurisdictions have chosen to allow for the optional inclusion of a discretionary relief provision when treaty benefits are denied under the PPT, namely Andorra, Australia, Belgium, Costa Rica, Cyprus, Czech Republic, Fiji, Gabon, Guernsey, Hungary, Ireland, Isle of Man, Jersey, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Pakistan, San Marino, Senegal, Seychelles, Singapore, United Kingdom and Uruguay.

Part / Article	MLI positions
	▸ Denmark opted to permit the symmetrical application of the simplified LOB provision. ▸ Greece opted to permit the asymmetrical application of the simplified LOB provision. ▸ If a Contracting Jurisdiction to a CTA that prefers to apply the PPT alone does not affirmatively agree to the application of the simplified LOB, neither the asymmetrical nor the symmetrical application will apply with respect to the CTA. In such a case the PPT alone would apply. 53 jurisdictions would be in the such a case, namely Andorra, Australia, Austria, Belgium, Burkina Faso, Canada, China, Costa Rica, Croatia, Cyprus, Czech Republic, Egypt, Fiji, Finland, France, Gabon, Georgia, Germany, Guernsey, Hong Kong, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Pakistan, Poland, Portugal, Romania, San Marino, Serbia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and the United Kingdom.
Part III: Treaty abuse Article 8 – Dividend transfer transactions	▸ 44 jurisdictions have reserved the right for the entirety of Article 8 not to apply to its CTAs. These include Andorra, Armenia, Austria, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Finland, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Isle of Man, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Pakistan, Poland, Portugal, Russia, San Marino, Seychelles, Slovakia, Singapore, Sweden, Switzerland, Turkey and the United Kingdom. ▸ 23 jurisdictions did not make any reservation with respect to Article 8, namely Argentina, Australia, Belgium, Burkina Faso, China, Colombia, Costa Rica, Egypt, Fiji, France, Indonesia, Ireland, Israel, Mexico, Netherlands, New Zealand, Romania, Senegal, Serbia, Slovenia, South Africa, Spain and Uruguay.
Part III: Treaty abuse Article 9 – Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property	▸ 36 jurisdictions have reserved the right for the entirety of Article 9 not to apply to its CTAs, including, Austria, Bulgaria, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Guernsey, Hong Kong, Hungary, Iceland, Isle of Man, Israel, Italy, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Pakistan, Romania, San Marino, Seychelles, Singapore, South Africa, Sweden, Switzerland, Turkey and the United Kingdom. ▸ 28 jurisdictions have chosen to include the option in Article 9(4) in their CTAs, namely, Argentina, Armenia, Burkina Faso, Colombia, Costa Rica, Croatia, Egypt, France, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Malta, New Zealand, Poland, Portugal, Russia, San Marino, Senegal, Serbia, Slovakia, Slovenia, Spain, Turkey and Uruguay. ▸ 8 jurisdictions have made other reservations with respect to this article, namely, Australia, Belgium, Chile, China, Ireland, Russia, Senegal and Slovenia. ▸ 3 jurisdictions did not make any reservation in respect to Article 9. These include Andorra, Argentina, Armenia, Burkina Faso, Colombia, Egypt, Fiji, France, Gabon, Germany, Greece, India, Indonesia, Japan, Mexico, Netherlands, New Zealand, Poland, Portugal, Serbia, Slovakia, Spain and Uruguay.

Part / Article	MLI positions
Part III: Treaty abuse Article 10 – Anti-abuse rule for permanent establishments situated in third jurisdictions	▸ 46 jurisdictions have reserved the right for the entirety of Article 10 not to apply to its CTAs. The jurisdictions are Australia, Belgium, Bulgaria, Burkina Faso, Canada, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Gabon, Georgia, Greece, Guernsey, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Isle of Man, Italy, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Pakistan, Poland, Portugal, San Marino, Serbia, Seychelles, Singapore, South Africa, Sweden, Switzerland, Turkey and the United Kingdom. ▸ 2 jurisdictions have made other reservations with respect to this article, namely Argentina and Chile. ▸ 19 jurisdictions did not make any reservation with respect to Article 10, namely Andorra, Armenia, Austria, Costa Rica, Fiji, Germany, India, Israel, Japan, Mexico, Netherlands, New Zealand, Romania, Russia, Senegal, Slovakia, Slovenia, Spain and Uruguay.
Part III: Treaty abuse Article 11 – Application of tax agreements to restrict a party's right to tax its own residents	▸ 46 jurisdictions have reserved the right for the entirety of Article 11 not to apply to its CTAs, including, Austria, Bulgaria, Burkina Faso, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Pakistan, San Marino, Serbia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and Uruguay. ▸ 3 jurisdictions have made other reservations with respect to this article, namely Chile, Mexico and Portugal. ▸ 18 jurisdictions did not make any reservation with respect to Article 11, namely Andorra, Argentina, Armenia, Australia, Belgium, China, Colombia, Fiji, Gabon, India, Indonesia, New Zealand, Poland, Romania, Russia, Senegal, Slovakia and the United Kingdom.
Part IV: Avoidance of permanent establishment status Article 12 – Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies	▸ 39 jurisdictions have reserved the right for the entirety of Article 12 not to apply to its CTAs. These include Andorra, Australia, Austria, Belgium, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Korea, Kuwait, Latvia, Liechtenstein, Luxembourg, Malta, Monaco, Pakistan, Poland, Portugal, San Marino, Seychelles, Singapore, South Africa, Sweden, Switzerland and the United Kingdom. ▸ 28 jurisdictions did not make any reservation with respect to Article 12, namely Argentina, Armenia, Burkina Faso, Chile, Colombia, Costa Rica, Croatia, Egypt, Fiji, France, Gabon, India, Indonesia, Israel, Japan, Lithuania, Mexico, Netherlands, New Zealand, Romania, Russia, Senegal, Serbia, Slovak Republic, Slovenia, Spain, Turkey and Uruguay.

Part / Article	MLI positions
Part IV: Avoidance of permanent establishment status Article 13 – Artificial avoidance of permanent establishment status through the specific activity exemptions	▸ 26 jurisdictions have reserved the right for the entirety of Article 13 not to apply to its CTAs, including Andorra, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Finland, Georgia, Greece, Guernsey, Hong Kong, Hungary, Iceland, Isle of Man, Jersey, Korea, Latvia, Liechtenstein, Malta, Monaco, Pakistan, Poland, Seychelles, Sweden and Switzerland. ▸ 31 jurisdictions have chosen to apply option A of Article 13 to its CTAs, namely, Argentina, Armenia, Australia, Austria, Burkina Faso, Colombia, Costa Rica, Croatia, Egypt, Fiji, Gabon, Germany, India, Indonesia, Israel, Italy, Japan, Kuwait, Mexico, Netherlands, New Zealand, Romania, Russia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Turkey and Uruguay. ▸ 7 jurisdictions have chosen to apply option B of Article 13 to its CTAs, namely, Belgium, France, Ireland, Lithuania, Luxembourg, San Marino and Singapore. ▸ 3 jurisdictions did not exercise any option with respect to Article 13, namely, Chile, Portugal and the United Kingdom. ▸ 4 jurisdictions have reserved the right for the anti-fragmentation clause to not apply to its CTAs, namely, Austria, Germany, Luxembourg and Singapore.
Part IV: Avoidance of permanent establishment status Article 14 – Splitting-up of contracts	▸ 44 jurisdictions have reserved the right for the entirety of Article 14 not to apply to its CTAs, including Andorra, Austria, Belgium, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, Isle of Man, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Pakistan, Poland, Portugal, San Marino, Seychelles, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and the United Kingdom. ▸ 7 jurisdictions have reserved the right for the anti-contract splitting rule not to apply with respect to provisions of their CTAs relating to the exploration for or exploitation of natural resources, namely, Australia, Egypt, Ireland, Lithuania, Netherlands, Russia and Serbia. ▸ 16 jurisdictions did not make any reservation with respect to Article 14, namely, Argentina, Armenia, Burkina Faso, Colombia, Fiji, France, Gabon, India, Indonesia, Israel, Kuwait, New Zealand, Romania, Senegal, Slovakia and Uruguay.
Part IV: Avoidance of permanent establishment status Article 15 – Definition of a person closely related to an enterprise	▸ 30 jurisdictions have reserved the right for the entirety of Article 15 not to apply to its CTAs. These include Andorra, Austria, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, Isle of Man, Jersey, Korea, Latvia, Liechtenstein, Luxembourg, Malta, Monaco, Pakistan, Poland, Seychelles, Singapore, Sweden and Switzerland.
Part V: Improving dispute resolution Article 16 – Mutual Agreement Procedure	▸ 24 jurisdictions have reserved the right for the first sentence of Article 16(1) not to apply to its CTAs, including, Armenia, Austria, Canada, Chile, China, Croatia, Germany, Hungary, India, Indonesia, Israel, Italy, Latvia, Monaco, Poland, Portugal, Romania, San Marino, Serbia, Singapore, Slovakia, Slovenia, South Africa and Spain. ▸ 5 jurisdictions have reserved the right for the second sentence of Article 16(2) not to apply to its CTAs, namely, Canada, Mexico, Monaco, Senegal and Switzerland.

Part / Article	MLI positions
Part V: Improving dispute resolution Article 17 – Corresponding adjustments	▸ 6 jurisdictions have reserved the right for the entirety of Article 17 to apply, namely, Czech Republic, Egypt, Indonesia, Latvia, Monaco and Seychelles. ▸ 35 jurisdictions have reserve their right for the entirety of Article 17 not to apply to their CTAs that already contain a provision within the scope of the reservation. The jurisdictions are Australia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Denmark, Finland, Gabon, Georgia, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Jersey, Korea, Latvia, Liechtenstein, Mexico, Poland, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey and Uruguay.
Part VI: Arbitration Articles 18 to 26 – Mandatory binding arbitration	▸ 25 jurisdictions opted in for mandatory binding arbitration, including Andorra, Australia, Austria, Belgium, Canada, Fiji, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Portugal, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. ▸ 7 jurisdictions reserve the right for the default arbitration mode ("best or final" offer approach) not to apply, namely Andorra, Greece, Japan, Malta, Portugal, Slovenia and Sweden and therefore elect independent opinion arbitration as the default type arbitration process. ▸ A Party that has not reserved the right to apply the independent opinion approach as a default rule may reserve the right for the default rules to not apply with respect to its CTAs with Parties that have reserved the right to apply the "independent opinion" approach as a default rule in place of "final offer" arbitration. 4 jurisdictions have made this reservation, namely, Canada, Finland, Italy and Singapore.

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