

# Applying the MULTILATERAL INSTRUMENT Step-by-Step

## Key documents to assess modifications by the MLI

The MLI

Specific tax agreement

The MLI position of a Contracting Jurisdiction

The MLI position of the other Contracting Jurisdiction

Five steps for application of the MLI

Step 1

• Entry into force of the MLI

Step 2

• Covered Tax Agreement

Step 3

• Reservations and choice of optional provisions

Step 4

• Notifications of existing provisions

Step 5

• Entry into effect of the MLI

Step 1

### • Entry into force of the MLI: Verify if the MLI has entered into force

- (i) Is the MLI itself in force? (Have five jurisdictions deposited the instrument of ratification, acceptance or approval?)  YES: Go to (ii)  NO: The MLI does not apply.
- (ii) Is the MLI in force for both Contracting Jurisdictions to the tax agreement? (Are both Contracting Jurisdictions Parties to the MLI?)  YES: The MLI could apply to the tax agreement. Go to **Step 2**  NO: The MLI does not apply.



More information:

- Article 34
- Explanatory Statement, para. 320-323

Step 2

### • Covered Tax Agreement: Verify if the tax agreement is a Covered Tax Agreement

- (i) Do both Contracting Jurisdictions list the tax agreement in their MLI positions as an agreement to be covered by the MLI?  YES: Go to (ii)  NO: The MLI does not apply to the tax agreement.
- (ii) Is the tax agreement in force?  YES: The MLI can apply to the tax agreement (The tax agreement is a Covered Tax Agreement). Go to **Step 3**  NO: The tax agreement will be a Covered Tax Agreement after entry into force.



More information:

- Article 2(1)(a)
- Explanatory Statement, para. 25-33
- Flowchart on Article 2

Step 3

### • Reservations and choice of optional provisions: Identify which MLI provisions apply

This step must generally be followed to identify which MLI provisions apply to a Covered Tax Agreement. For detailed information and specificities of each Article, please see the MLI flowcharts.

#### Reservations:

Does either Contracting Jurisdiction to the Covered Tax Agreement make a reservation on the application of a provision of the MLI?

- YES: The MLI provision for which the reservation is made does not apply and does not modify the Covered Tax Agreement.
- NO: The MLI Article could apply and modify the Covered Tax Agreement.



More information:

- Each MLI provision and its Explanatory Statement
- Flowchart on each Article

Note: Each Contracting Jurisdiction is allowed to make a reservation unilaterally, while the effect of reservation applies symmetrically (see Article 28(3)). Accordingly, a reservation made by a Contracting Jurisdiction with respect to a provision generally blocks the application of the provision, whether or not the other Contracting Jurisdiction has also made the reservation.

#### Optional provisions:

Do both Contracting Jurisdictions to the Covered Tax Agreement choose to apply an optional provision of the MLI?

- YES: The optional provision chosen could apply and modify the Covered Tax Agreement.
- NO: The optional provision does not apply.



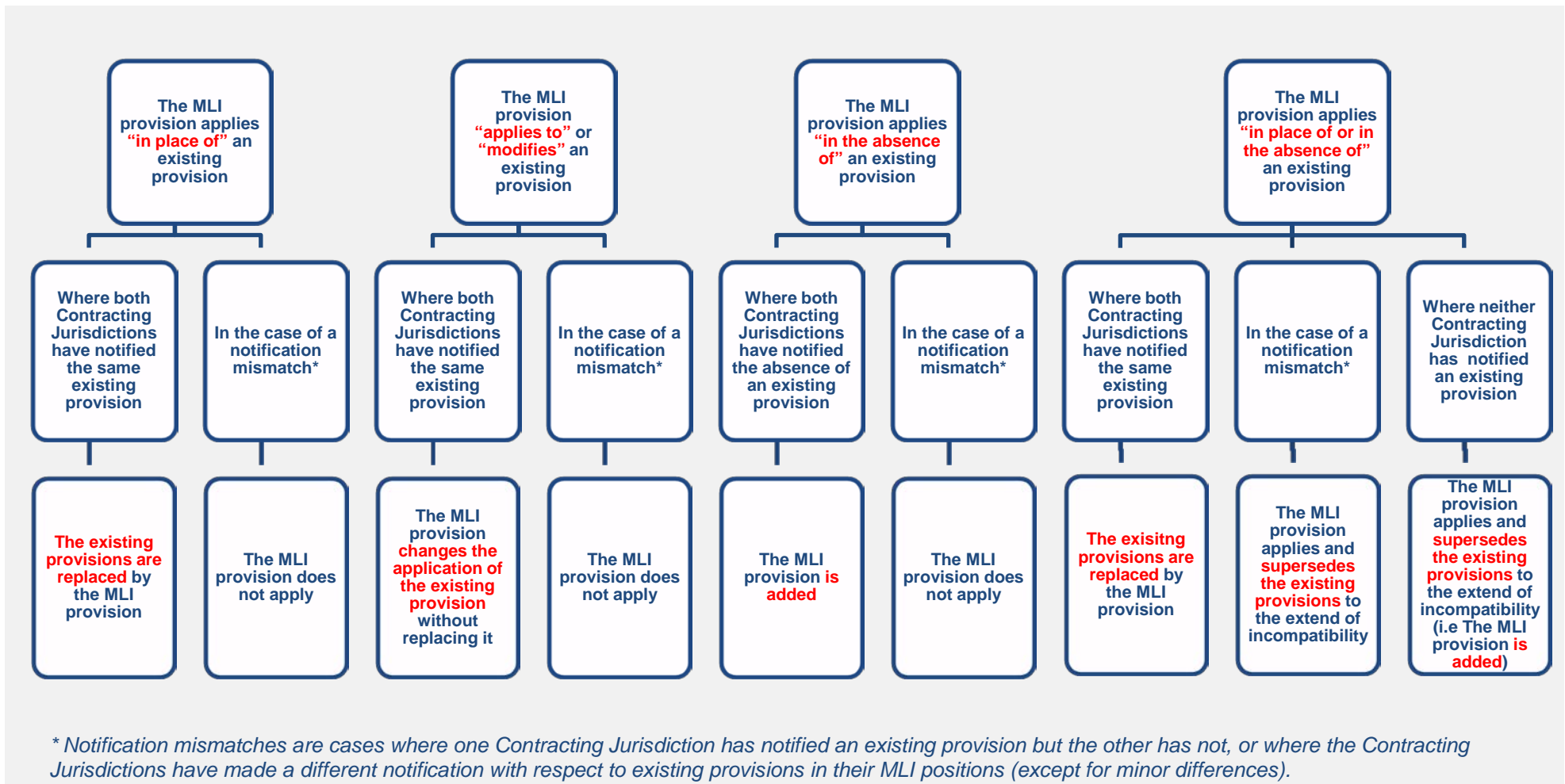
More information:

- Each MLI provision and its Explanatory Statement
- Flowchart on each Article

Note: Contrary to reservations, both Contracting Jurisdictions are required to choose to apply the same optional provision in order to apply the provision (except for Article 5 and 23(5)).

## • Notifications of existing provisions: Identify which existing provisions are modified

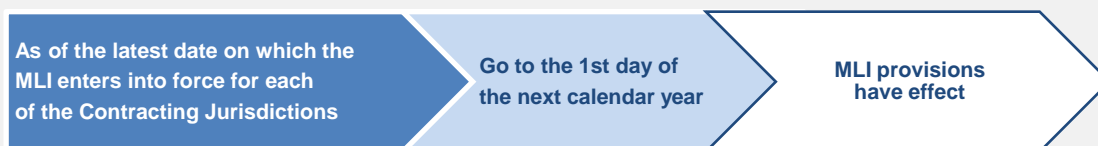
To ensure clarity and transparency about the application, the MLI requires Parties to notify existing provisions to be modified by the MLI provision. In addition, each Article contains provisions describing details on how the applicable MLI provisions modify a Covered Tax Agreement (compatibility clauses). The effect of notifications depends on the type of compatibility clause which could provide that the MLI provision applies “in place of”, “applies to” or “modifies”, “in the absence of”, or “in place of or in the absence of” (see also the Explanatory Statement, para. 15-18).



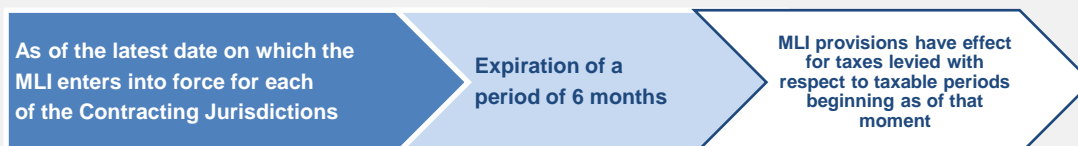
## • Entry into effect of the MLI: Verify if the MLI provisions have effect

The MLI provisions will generally have effect in the Contracting Jurisdictions with respect to a Covered Tax Agreement at different moment with respect to taxes withheld at source and with respect to all other taxes levied by a Contracting Jurisdiction.

### With respect to taxes withheld at source:



### With respect to all other taxes levied by a Contracting Jurisdiction:



### More information:

- Articles 35 and 36
- Explanatory Statement, para. 324-350

Note: The MLI provides exceptions to the above general rules of entry into effect. Please see Articles 35 and 36 as well as the MLI positions.

This Step-by-step overview has been prepared by the OECD Secretariat as part of the MLI Application toolkit. For more information see [oe.cd/mli](http://oe.cd/mli).