Multilateral Instrument

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

Information Brochure

The Multilateral Instrument

A turning point in tax treaty history

"The conclusion of this multilateral instrument marks a new turning point in tax treaty history. We are moving towards rapid implementation of the far-reaching reforms agreed under the BEPS Project in more than 1,100 tax treaties worldwide. In addition to saving the signatories from the burden of bilaterally re-negotiating these treaties, the Convention will result in more certainty and predictability for businesses, and a better functioning international tax system for the benefit of our citizens."

Angel Gurría
OECD Secretary-General

100-240 billion USD annual revenue loss due to BEPS

Base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. Conservative estimates indicate annual losses of anywhere from 4 to 10% of global corporate income tax revenues, i.e. USD 100 - 240 billion annually.

Working together in the OECD/G20 BEPS Project, over 60 countries jointly developed 15 actions to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment. Leaders of OECD and G20 countries, as well as other leaders, urged the timely implementation of this comprehensive BEPS package. The Multilateral Instrument (MLI) responds to this call for swift action by implementing the BEPS measures which require changes to tax treaties.

71 jurisdictions covered 1,100+ matched treaties

On 7 June 2017, Ministers and other high-level representatives of over 70 jurisdictions participated in the signing ceremony of the MLI in Paris. At this ceremony, the MLI was signed by 67 countries and jurisdictions, covering 68 jurisdictions from all continents and all levels of development. On the occasion of the signing ceremony, nine jurisdictions have expressed their intention of becoming a signatory of the MLI, three of which has since signed the MLI.

Signatories of the MLI may choose which existing tax treaties they would like to modify using the MLI. Once a tax treaty has been listed by the two parties, it becomes an agreement to be covered by the MLI. The current signatories have listed over 2,350 treaties, already leading up to over 1,100 matched agreements.

The number of modified tax treaties is expected to increase continually as many additional jurisdictions are already preparing for signature of the MLI by the end of 2017.

MLI: the fastest way to strengthen tax treaties

The MLI allows jurisdictions to swiftly implement measures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax location.

The measures to be implemented will put an end to treaty abuse and "treaty shopping" by transposing in existing tax treaties jurisdictions’ commitment to minimally include in their tax treaties tools to ensure these treaties are used in accordance with their intended object and purpose.

The MLI will further enhance dispute resolution mechanisms in accordance with minimum standards agreed by over 90 countries. In addition, 26 jurisdictions have already opted in to introduce an arbitration procedure to their tax treaties, further improving tax payer certainty.

Multilateral Instrument

Timeline

February 2013

On 12 February 2013 the report Addressing Base Erosion and Profit Shifting was published recommending the development of an action plan to address BEPS issues in a comprehensive manner.

July 2013

In July 2013, the OECD Committee on Fiscal Affairs (CFA) submitted the BEPS Action Plan to the G20 identifying 15 actions to address BEPS in a comprehensive manner, and set out deadlines to implement those actions.

September 2014

On 16 September 2014, the Action 15 interim report of the BEPS Action Plan called for the development of a multilateral instrument to implement tax treaty-related BEPS measures developed in the course of the work on BEPS and modify bilateral tax treaties.

February 2015

Based on the Action 15 interim report, a mandate to set up the Ad hoc Group for the development of a multilateral instrument was developed by the CFA in February 2015 and endorsed by the G20 Finance Ministers and Central Bank Governors, open to the participation of all interested countries on an equal footing.

October 2015

On 5 October 2015, the final BEPS package was published and subsequently endorsed by the G20 Finance Ministers and Leaders comprising reports on each of the 15 actions identified in the BEPS Action Plan.

November 2016

On 24 November 2016, the ad hoc Group concluded the negotiations and adopted the Text of the MLI as well as its accompanying Explanatory Statement.

June 2017

On 7 June 2017, a high-level signing ceremony took place in Paris.

2017-2019

- Completion of steps to undertake to sign the MLI by many other jurisdictions expected to sign the MLI.
- Signatories ratify the MLI in accordance with their domestic procedures.
- The MLI will enter into force three months after the deposit of the fifth instrument of ratification, acceptance or approval. Six months after the MLI has entered into force, it will take effect for taxes levied (with the exception of taxes withheld at source).
- Preparation of consolidated versions of tax treaties modified by the MLI by individual jurisdictions (either due to domestic requirements or in order to ensure clarity and transparency for tax administrations and taxpayers).

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Key Features

Jurisdictions involved

- Instrument developed by an Ad hoc Group of 100+ jurisdictions
- Signed by developed and developing economies around the world
- Instrument open for signature by any country

Measures included

- Includes measures against hybrid mismatch arrangements (Action 2) and treaty abuse (Action 6), strengthened definition of permanent establishment (Action 7) and measures to make mutual agreement procedures (MAP) more effective (Action 14), including provisions on MAP arbitration.

Tax treaties covered

- Parties can choose tax treaties to be modified by the MLI
- Parties remain free to make subsequent amendments to their modified tax treaties through bilateral negotiations

Flexibility

- Flexibility with respect to ways of meeting BEPS minimum standards on treaty abuse and dispute resolution
- Possibility to opt out of provisions which do not reflect a BEPS minimum standard with the possibility to opt in later
- Possibility to apply optional provisions and alternative provisions at any time where there are multiple ways to address BEPS

Clarity & Transparency

- Explanatory Statement available and additional materials
- Notifications of Covered Tax Agreements, reservations, options and affected existing provisions (MLI Positions) to identify modifications. MLI positions provided by each jurisdiction available on the OECD website
- Additional information material will be published on the OECD website, including interactive flowcharts of each substantive provision as well as an application toolkit

Languages

- English and French text authentic
- Translations being developed by individual countries and published on the OECD website (oe.cd/mli)

Signatories and Group members

Jurisdictions covered by the MLI as of 20 October 2017

Andorra
Argentina
Armenia
Australia
Austria
Belgium
Bulgaria
Burkina Faso
Cameroon
Canada
Chile
China
(inc. Hong Kong)
Colombia
Costa Rica
Croatia
Cyprus
Czech Republic
Denmark
Egypt
Fiji
Finland
France
Gabon
Georgia
Germany
Greece
Guernsey
Hungary
Iceland
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Korea
Kuwait
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Mauritius
Mexico
Monaco
Netherlands
New Zealand
Nigeria
Norway
Pakistan
Poland
Portugal
Romania
Russia
San Marino
Senegal
Serbia
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sweden
Switzerland
Turkey
United Kingdom
Uruguay

Other members of the ad hoc Group on the MLI

Albania
Azerbaijan
Bahrein
Bangladesh
Barbados
Belize
Benin
Bermuda
Bhutan
Bosnia and Herzegovina
Brazil
Côte d'Ivoire*
Democratic Republic of Congo
Dominican Republic
Estonia*
Guatemala
Haiti
Jamaica*
Jordan
Kazakhstan
Kenya
Lebanon*
Lesotho
Liberia
Malaysia
Marshall Islands
Mauritania
Moldova
Mongolia
Morocco
Panama*
Papua New Guinea
Peru
Philippines
Qatar
Saudi Arabia
Sri Lanka
Swaziland
Tanzania
Thailand
Tunisia*
Uganda
Ukraine
United Arab Emirates
United States
Vietnam
Zambia
Zimbabwe

Organisations participating in ad hoc Group as observers

- African Tax Administration Forum (ATAF);
- Association of Tax Authorities of Islamic Countries (ATAIC);
- Centre de rencontres et d'études des dirigeants des administrations fiscales (Credaf);
- Commonwealth Association of Tax Administrators (CATA);
- Inter-American Centre of Tax Administrations (CIAT);
- International Monetary Fund (IMF);
- Intra-European Organisation of Tax Administrations (IOTA);
- World Bank Group (WBG)

*) On the occasion of the signing ceremony of 7 June 2017, these jurisdictions have expressed their intent to sign the MLI.

Six questions on the MLI

How does the MLI help the fight against BEPS?

Abuse of tax treaties is an important source of base erosion and profit shifting (BEPS). The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing bilateral tax treaties in a synchronised and efficient manner. These measures will prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralise the effects of hybrid mismatch arrangements.

Which jurisdictions have signed up?

As of 20 October 2017, the MLI has been signed by 70 signatories, covering 71 jurisdictions. Additional jurisdictions have expressed their intention to sign the MLI, with many jurisdictions already preparing for signature of the MLI. An up-to-date list of the Signatories is available at oe.cd/mli.

How will I know if an existing tax treaty is modified by the MLI?

The MLI modifies tax treaties that are "Covered Tax Agreements". A Covered Tax Agreement is an agreement for the avoidance of double taxation that is in force between Parties to the MLI and for which both Parties have made a notification that they wish to modify the agreement using the MLI. Lists of notified tax treaties by jurisdiction can be found in the MLI Positions available at oe.cd/mli.

Can Signatories opt in for certain MLI provisions later in time (after signature)?

The provisional MLI Position of each Signatory indicates the tax treaties it intends to cover, the options it has chosen and the reservations it has made. Signatories can amend their MLI Positions until ratification. Even after ratification, Parties can choose to opt in with respect to optional provisions or to withdraw reservations. For example, while 26 Signatories have chosen to apply the MLI arbitration provisions, additional Signatories can choose to apply those provisions later.

When will the modifications become effective?

It is likely that the first modifications to covered treaties will become effective in the course of 2018. The timing of entry into effect of the modifications is linked to the completion of the ratification procedures in the jurisdictions that are parties to the covered tax treaty.

The Signatories will inform the OECD of the completion of their ratification procedures. As the Depositary of the MLI, the OECD will be tracking ratification procedures completed by the MLI Signatories and will make available to the public all relevant information on effects of the MLI provisions.

How will the OECD provide further clarity?

The OECD Secretariat is developing tools and guidance on the MLI. The first tools are already available at oe.cd/mli. These tools include interactive flowcharts on each of the substantive MLI Articles and the MLI Toolkit on the application of the MLI.

For more Frequently Asked Questions visit oe.cd/mli.

Group photo of the Signatories participating in the MLI Signing Ceremony held on 7 June 2017 at the OECD Headquarters in Paris

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http://oe.cd/mli

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