

Hong Kong Tax Alert

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Hong Kong started the legislative process to modify its Double Tax Agreements through the BEPS Multilateral Instrument

Summary



An Order was recently published in the Gazette as part of the domestic legislative process to implement the OECD's BEPS Multilateral Instrument in the Hong Kong SAR (Hong Kong). When the provisions of the Multilateral Instrument enter into effect, a number of Hong Kong's Double Tax Agreements (DTAs) will be modified to incorporate certain tax treaty related BEPS measures under the OECD's BEPS 1.0 Action Plan.

On 30 September 2022, the Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order¹ was gazetted. The Order seeks to implement the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Multilateral Instrument or MLI) in Hong Kong by incorporating it (and the notifications and reservations under the MLI applicable to Hong Kong) as part of Hong Kong's domestic tax law.

When the provisions of the MLI enter into effect in Hong Kong and the relevant tax treaty jurisdictions, the covered DTAs of Hong Kong will be modified to incorporate the tax treaty related BEPS measures recommended by the OECD under BEPS Action 6 (preventing tax treaty abuse) and Action 14 (making dispute resolution more effective). For more details on the changes brought by the MLI, the effective dates of those changes and the potential impacts on Hong Kong businesses, please refer to our Hong Kong Tax Alert – Issue 14, August 2022 in this [link](#).

The Order will be introduced into the Legislative Council for negative vetting on 19 October 2022. Subject to the completion of the negative vetting procedure, the Order will come into operation on 9 December 2022. The exact effective dates of the MLI changes with respect to a covered Hong Kong DTA are subject to the completion of the legislative and other relevant procedures of the MLI by Hong Kong's tax treaty partners. The earliest possible effective dates of the MLI changes in Hong Kong are 1 April 2023 (for taxes withheld at source) or 1 April 2024 (for other taxes).

The Inland Revenue Department has indicated that to facilitate stakeholders to understand the effect of the MLI on individual Hong Kong DTAs, it will publish on its website information as to when and how the covered DTAs will be modified under the MLI². It has yet to be seen whether this will take the form of synthesized text of the covered DTAs as many other tax jurisdictions are producing for taxpayers' reference.

¹ The Order can be accessed via this link: <https://www.gld.gov.hk/egazette/pdf/20222639/es20222639182.pdf>

² Please refer to this link for more details: <https://www.ird.gov.hk/eng/ppr/archives/22092801.htm>

KPMG observations

The exact changes brought by the MLI and the effective dates of those changes will vary among individual Hong Kong DTAs. Both Hong Kong and foreign resident business groups that wish to enjoy a benefit under a Hong Kong DTA should understand the changes brought by the MLI to the relevant DTA, evaluate the potential impact of the changes on treaty benefit application, and consider whether any changes to their existing holding / investment structures are necessary.

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