



# The MLI enters into force in Malta

Further to the publication and local ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the 'MLI') by means of Legal Notice 142 of 2018, on 18th December 2018 Malta deposited its instrument of ratification of the MLI with the OECD Depository.

The MLI, as a product of the OECD base erosion and profit shifting ('BEPS') project, intends to implement the guidance provided and changes recommended by the OECD in the area of BEPS tax treaty based measures in a highly efficient manner. This is achieved through an innovative cooperation between states, whereby the MLI operates alongside the existing bilateral tax treaties without the requirement of renegotiating each bilateral tax treaty. The MLI potentially affects approximately 75% of the Maltese treaty network (on the basis of the OECD list of signatories and parties as at 9th April 2019).

Malta has opted in to:

- amendments to the preamble to make reference to the dual purpose of tax treaties,
- the introduction of the principal purposes test and the discretionary relief,
- improve the access and operation of the mutual agreement procedure,
- the limitation of the restriction to tax property rich companies by reference to a valuation period of 365 days; and
- the provisions related to arbitration proceedings.

The actual effects on tax treaties will depend on whether the options by the other States are matching Malta's options.

Arguably the most important amendment is the introduction of the principal purposes test (PPT), which, in simplistic terms, will disallow treaty benefits where the principal purpose or one of the principal purposes of structuring the transaction is to obtain the benefits of the treaty, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty. Given the inherent subjectivity of the PPT, there is a risk that each state interprets the PPT differently, which could of course create uncertainty. From the examples and commentaries included in the BEPS Action 6 (which are part of the context of the PPT's application), business rationale and economic substance are of particular importance to obtain treaty benefits.



On the other hand, Malta has reserved the right not to apply, among others, the MLI article with respect to hybrid entities, the new tie breaker rule for dual-resident entities, the minimum holding period in relation to dividend payments, and all amendments in relation to permanent establishments (including the new definitions, the new anti-abuse rule, the narrow application of the exemption and the timing issues).

At an international level the MLI entered into force on 1st July 2018. The MLI entered into force in Malta on 1st April 2019, being the first day of the month following the lapse of three months from the abovementioned deposit. Subsequently, an analysis of the entry into effect with respect to each Covered Tax Agreement should be made in line with the below:

- 1. With respect to taxes withheld at source:** The primary consideration is the latest of the dates of entry into force in the two Contracting States. From a Maltese perspective, the entry into effect would be from the first day of the next taxable period.
- 2. With respect to all other taxes:** the MLI enters into effect on the first day of the next taxable period upon the lapse of 6 months (or shorter if both contracting states notified the Depository of such intention) from the latest of the dates of entry into force of the two Contracting States.

Therefore, depending on the other Contracting State, the MLI could enter into effect as early as 1st January 2020.



### Key takeaway:

The entry into effect of the MLI could have a significant impact on the interpretation and application of Covered Tax Agreements. For this purpose, tax treaties have to be analysed in conjunction with the MLI. We are more than happy to advise you on any consequences that this might have on your business and intended transactions.

## Contact Us

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