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Tax Alert

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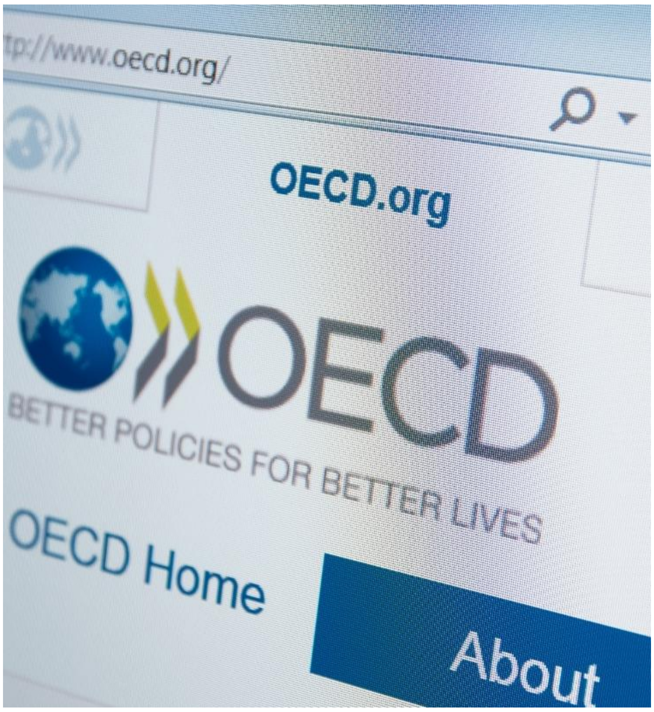
68 Countries Sign the Multilateral Instrument Implementing the Treaty Related BEPS Provisions



On 7 June 2017, the Organisation for Economic Cooperation and Development (OECD) hosted a signing ceremony for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) under BEPS Action 15 (the "Multilateral Instrument" or "MLI").

The ceremony was widely attended by ministers and dignitaries representing members of the OECD BEPS inclusive framework. During the ceremony held in Paris, 68 countries signed the MLI, including Singapore, by Ms Sim Ann, Senior Minister of State, Ministry of Culture, Community and Youth, and Trade and Industry. An additional 8 countries expressed a commitment sign at a future date. Based on the current signatories, and subject to ratification, the ceremony will result in changes to at least 47 Avoidance of Double Taxation Agreements (DTAs) in Singapore.

Background of the MLI mechanism

The MLI was developed to provide a vehicle for the swift implementation of the tax treaty-related measures produced under the BEPS project, without the need to re-negotiate each DTA. The measures under the MLI include BEPS minimum standards on preventing treaty abuse and enhancing dispute resolution.

To maximise participation, the MLI provides potential signatories with significant flexibility to decide which portions of the MLI to adopt, modify, or reject. Specifically, the MLI grants jurisdictions:

- Choice with respect to which tax treaties the MLI modifies (referred to as "Covered Tax Agreements" or "CTAs");
- Alternative ways to meet the minimum standards under Actions 6 (treaty abuse) and 14 (mutual agreement procedures) agreed as part of the BEPS project;
- Ability to completely or partially opt out of certain provisions with respect to all or some CTAs; and
- Ability to apply optional or alternative provisions.

Upon signing, each signatory has deposited a list of DTAs intended to be covered under the MLI, as well as a PDF identifying their preliminary positions and reservations with respect to each provision of the MLI.

Singapore's provisional list of expected positions and reservations can be downloaded here. These positions will be finalised (and potentially modified) after the normal ratification process in each jurisdiction is completed. In a press release, the OECD Secretariat indicated its intent to develop tools to allow taxpayers to reconcile changes and options agreed between jurisdictions. Click here to access OECD press release.

Noteworthy Outcomes

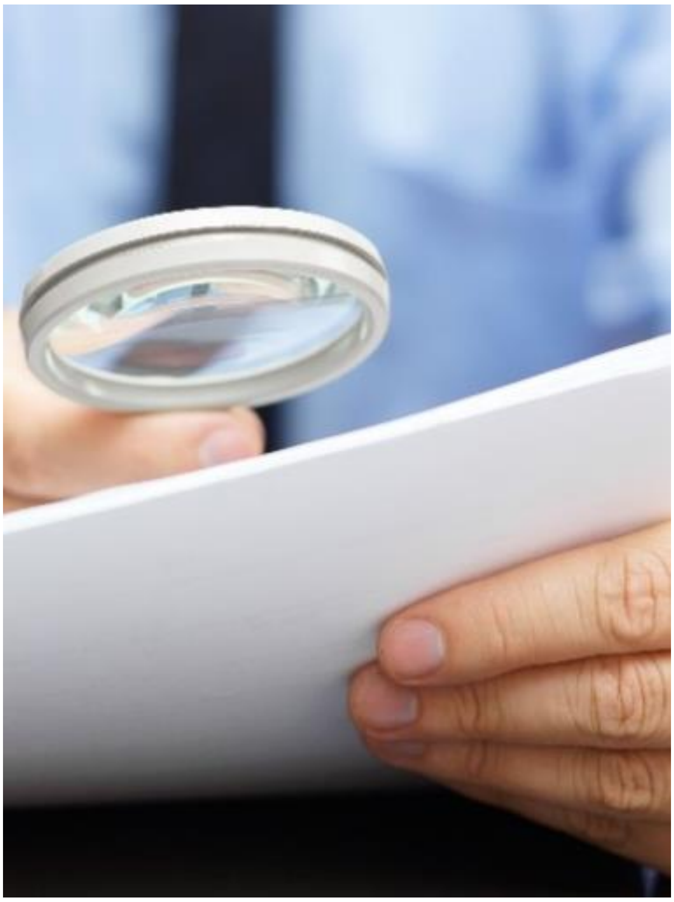
47 of Singapore's DTAs will be changed by the MLI*

Out of its 82 DTAs, Singapore has chosen 68 as potential CTAs. The MLI generally only becomes operative when both parties elect to treat a DTA as a CTA.

However, out of these 68 countries, three have not chosen Singapore (Germany, Sweden and Switzerland) as a CTA and 17 have not signed the MLI (Estonia, Mauritius, Bangladesh, Barbados, Kazakhstan, Malaysia, Mongolia, Morocco, Papua New Guinea, Philippines, Qatar, Saudi Arabia, Sri Lanka, Thailand, Ukraine, United Arab Emirates and Vietnam), leaving the following 47 of the 68 DTAs chosen by Singapore to be changed by the signing of the MLI*:

Australia
Austria
Belgium
Bulgaria
Canada
China
Cyprus
Czech Republic
Denmark
Egypt
Fiji
Finland
France
Georgia
Guernsey
Hungary
India
Indonesia
Ireland
Ise of Man
Israel
Italy
Japan
Jersey
Kuwait
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Mexico
Netherlands
New Zealand
Pakistan
Poland
Portugal
Romania
Russia
San Marino
Seychelles
Slovak Republic
Slovenia
South Africa
Spain
Turkey
United Kingdom
Uruguay

* Norway's MLI position at the time of this publication was not available



Singapore will adopt the following key provisions under the MLI

Amongst other provisions, Singapore has adopted the following under the MLI:

1. *The BEPS minimum standard for preventing treaty abuse*. This consists of (i) a statement of intent that a DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and (ii) the adoption of a general anti-abuse rule, commonly known as the Principal Purpose Test (PPT).

2. *The BEPS minimum standard for enhancing dispute resolution*. When a Singapore resident taxpayer encounters taxation which is not in accordance with the intended application of the DTA provisions, the taxpayer can seek assistance from Inland Revenue Authority of Singapore to contact the treaty partner to resolve the dispute.

3. *Providing more certainty and timeliness to taxpayers for cross-border disputes*. Singapore has opted for the mandatory binding arbitration provisions to be included in our DTAs as they provide certainty to taxpayers that treaty-related disputes will be resolved within a specified timeframe.

Future Process and Effective Dates

The MLI will be subject to each jurisdiction's treaty procedures for ratification, acceptance, or approval (collectively, ratification). Pursuant to its terms, the MLI will not enter into force until three months after at least 5 jurisdictions have deposited instruments of ratification with the OECD. Thereafter, the MLI generally enters into force with respect to a jurisdiction on the first day of the month following a period of three months after it deposits its instrument of ratification with the OECD. The MLI enters into effect with respect to a particular CTA as follows:

- With respect to withholding taxes: on or after the first day of the next calendar year that begins on or after the latest of the dates on which the MLI enters into force for each of the parties to the CTA;
- With respect to all other taxes: for taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period, if all parties to the CTA notify the OECD depositary that they intend to apply such shorter period) from the latest of the dates on which the MLI enters into force for each of the parties to the CTA.

How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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