



Tax & Legal - News Alert



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The MLI becomes effective in South Africa from 1 January 2023

On 30 September 2022, South Africa deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The MLI will now enter into force in South Africa on 1 January 2023. This comes after South Africa initially signed the MLI back in 7 June 2017 and confirmed its provisional list of reservations and notifications to the MLI. National Treasury has now provided its final list of reservations and notifications which can be found [here](#).

What is the MLI?

The MLI is one of the outcomes of the OECD/G20 Project to tackle Base Erosion and Profit Shifting (BEPS) which resulted in the release of 15 “actions” in November 2015. These actions are essentially measures aimed at ensuring that, in a cross-border context, profits are taxed where substantive economic activities generating the profits are carried out and where value is created. These actions include tax treaty-related measures aimed at addressing certain hybrid mismatch arrangements, preventing treaty abuse, addressing the artificial avoidance of permanent establishment status, and improving dispute resolution between taxpayers and revenue authorities. Since implementing these measures involves changes to more than 3 000 tax treaties, the adoption of the MLI enables countries to swiftly alter their tax treaties to implement these measures

What does this mean for South Africa?

With effect from 1 January 2013, approximately 50 of South Africa’s 80 tax treaties will be modified to the extent provided by the MLI and South Africa’s specific elections thereto. However, amongst the number of tax treaties that will not currently be modified are South Africa’s tax treaties with Germany, Botswana, Brazil, Mozambique and the United States.

One key modification that will affect most of South Africa’s tax treaties covered by the MLI is the so-called “principal purpose test” (PPT). The PPT provides that a benefit under a tax treaty will not be granted if it is reasonable to conclude that obtaining the benefit was one of the principal purposes of the arrangement or transaction that resulted directly or indirectly in that benefit, unless the granting of the benefit was in accordance with the object and purpose of the treaty. Although time will tell how SARS, the courts and/or the international tax community will interpret the PPT, it likely means that any cross-border structure or transaction that was arranged for a purpose which includes that of obtaining a tax benefit under a treaty, and which ultimately amounts to an abuse

of that treaty, will infringe the PPT and likely result in a cancellation of a particular treaty benefit.

What does this mean for us?

Advising on the tax consequences of cross-border transactions is already a complex exercise. In addition to interpreting both South African domestic tax law and an applicable tax treaty, a 50-page MLI document needs to be digested as well as the particular MLI reservations and notifications made by each country. Each “benefit” available under a tax treaty will now need to be tested against the PPT to assess whether obtaining such a benefit is justifiable in the circumstances.

Should you have any queries or require any assistance relating to the above, please do not hesitate to contact us.



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