



# KPMG Global Tax webcast

Global BEPS update

Tuesday 13 June 2017, 9:00am – 10:00am EDT



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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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# Speakers

**Manal S. Corwin**, Principal and National Leader, International Tax, KPMG in the US

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**Adrian Crawford**, Partner, KPMG in Ireland, Head of Irish Tax Desk, KPMG in the US

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**Robin Walduck**, Partner, KPMG in the UK

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**Grant Wardell-Johnson**, Partner in Charge, Australian Tax Centre, KPMG Australia

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**Jose Manuel Ramirez**, Partner, KPMG in the US

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**Jesse Eggert**, Principal, Washington National Tax, KPMG in the US

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# Administrative

## CPE regulations require that online participants take part in online questions

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- polling questions will appear on your media player
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# Agenda

## Overview of outcomes of MLI signing ceremony

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## Regional impact

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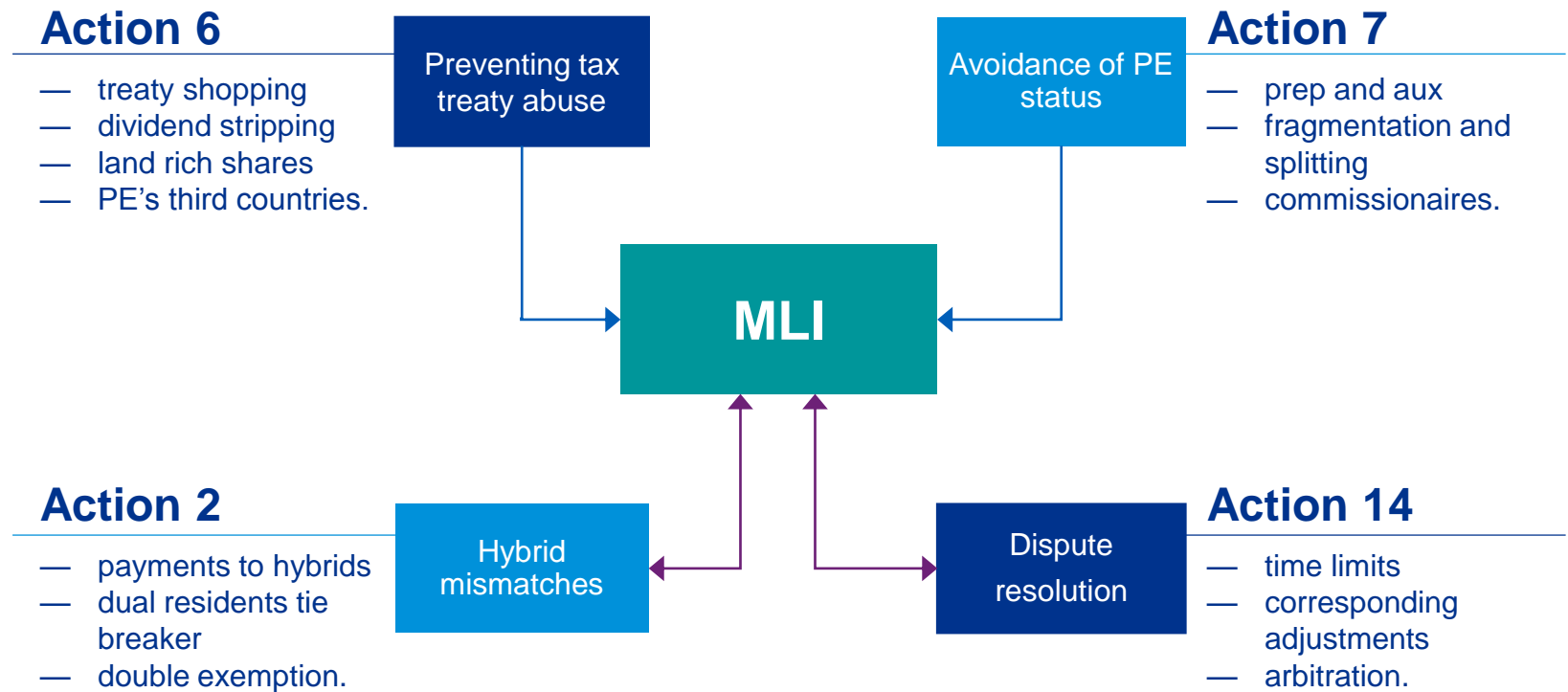
- Europe
- ASPAC
- Latin America
- Americas
- Middle East and Africa.



# Overview of Outcomes of MLI signing ceremony

Manal S. Corwin, Principal and National Leader, International Tax, KPMG in the US

# Action 15 — BEPS measures in the MLI



# Outcome of MLI signing ceremony — June 7

## Who signed the MLI

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- 67 jurisdictions signed (68 covered)
- 9 jurisdictions expressed intent to sign
- additional jurisdictions expected to sign end of 2017.

## Treaties impacted

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- 1,103 treaties impacted (2,362 listed)
- 85 percent of treaties between signatories covered.

## Provisional MLI positions published

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- tax treaties covered
- options chosen
- reservations made.



# MLI signatories (as of June 7, 2017)

Americas	Europe/Eurasia			ASPAC	Africa Middle-East
Argentina	Andorra	Guernsey	Norway*	Australia	Burkina Faso
Chile	Armenia	Hungary	Poland	China	Egypt
Colombia	Austria	Iceland	Portugal	Fiji	Gabon
Costa Rica	Belgium	Ireland	Romania	Hong Kong**	Israel
Mexico	Bulgaria	Isle of Mann	Russia	India	Kuwait
Uruguay	Croatia	Italy	San Marino	Indonesia	Senegal
Canada	Cyprus	Jersey	Serbia	Japan	Seychelles
Jamaica	Czech Rep.	Latvia	Slovak R.	Korea	South Africa
Panama	Denmark	Liechtenstein	Slovenia	New Zealand	Cameroon
	Finland	Lithuania	Spain	Pakistan	Cote d'Ivoire
	France	Luxembourg	Sweden	Singapore	Lebanon
	Georgia	Malta	Switzerland	Mauritius	Nigeria
	Germany	Monaco	Turkey		Tunisia
	Greece	Netherlands	UK		
			Estonia		

# Procedural matters

**Signatories can amend their MLI Positions until ratification**

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**After ratification countries can opt-in to provisions, or remove reservations**

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**Consolidated texts might be prepared in local jurisdictions, but will not be legal documents**

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**Expected that first modifications will become effective in course of 2018**

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# Observations on key provisions

## Minimum standard on treaty abuse

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- all jurisdictions elected the PPT
- 12 signatories also chose to supplement the PPT with a simplified LOB: Argentina, Armenia, Bulgaria, Chile, Colombia, India, Indonesia, Mexico, Russia, Senegal, the Slovak Republic and Uruguay.

## Expand PE standard

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- *dependent agent PE*
  - less than half of signatories opted in including many in LATAM
  - also, France, India, Indonesia, Japan, the Netherlands, New Zealand and Spain.
- *specific activity exemptions*
  - over a third opted to require all exemptions to be prep and aux
  - a majority of signatories elected to apply the Anti-Fragmentation Rule.

# Observations on key provisions

## Arbitration

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- 25 jurisdictions signed up to arbitration
- will result in arbitration in 150 treaties
- most opted for final offer/baseball arbitration
- others expected to join
- OECD working on a model competent authority agreement for arbitration.



# Europe

Adrian Crawford, Partner, KPMG in Ireland, Head of Irish Tax Desk in KPMG in the US  
and Robin Walduck, Partner, KPMG in the UK

# European trends

## **EU member states have embraced BEPS recommendations**

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- despite some member states not being OECD members
  - Cyprus, Croatia, Malta, Romania.

## **Unanimous adoption of ATAD 1 & 2**

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- implementation from 2019 onwards.

## **EU member state agreement on automatic exchange of rulings and CbyC reporting**

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## **27 of 28 member states signed the MLI**

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- Estonia has the clear intention to join shortly.

## **However, wide spectrum of choices made**

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- Cyprus — minimal approach — opting in for the PPT
- Netherlands — opting in on all action items in the MLI.

# Europe — key MLI items

## **BEPS 2: given ATAD 1 and 2, very few opting in**

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- Belgium, Germany, Netherlands, UK & Spain
- ATAD perceived to close down hybrids (intra-EU and with third parties).

## **BEPS 6: all EU member states opted to adopt the PPT**

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- two MS opted for additional simplified limitation on benefits provision (Bulgaria and Slovak Republic)
- consistent with EC recommendations in 2016 on tax treaty abuse.

## **BEPS 7: EC recommended adoption of new art. 5 provisions**

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- countries hesitant on this
- adoption of dependent agent PE provisions limited — only France, the Netherlands and Spain
- splitting up contracts — only France, the Netherlands and Ireland adopted
- will there be more domestic legislative actions similar to the UK in relation to the Diverted Profits Tax?

# Europe — key MLI items (cont'd)

## ■ BEPS 14: mandatory binding arbitration

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- adopted by majority of EU Member States (Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the UK)
- needs to be considered alongside new Directive
- agreement reached on 23 May 2017 on new Directive for resolving double taxation disputes within the EU
- builds on EU Arbitration Convention 90/436/EEC on elimination of double taxation
- new Directive requirements:
  - dispute resolution mechanisms to be mandatory and binding
  - clear timelines and an obligation to reach results
  - allows for MAP to be initiated by the taxpayer; agreement within 2 years.



# Europe — UK position

**Position consistent with earlier position publicized by HMRC**

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**Signed; 119 Covered Tax Agreements (including the US)**

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**Treaty abuse**

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- adopting PPT in full
- question of how this is implemented in practice?

**Permanent establishment**

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- not adopting PE recommendations except for anti-fragmentation rules
- consider DPT to be an effective domestic action?
- concern over a proliferation of PEs in other jurisdictions if adopted widely?

**Arbitration**

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- will opt for baseball arbitration
- will not disapply arbitration with countries that have opted for reasoned opinion.

# Europe — Ireland

Position consistent with earlier position released by Department of Finance on 2 June 2017

Signed; 71 Covered Tax Agreements (including the US) – Dutch treaty not included as under negotiation

Expected effective date 1 January 2019

## Treaty abuse

- adopting PPT in full.

## Permanent establishment

- not adopting dependent agent
- maintaining the exemption for certain PEs (option B) and adopting anti-fragmentation rules
- adopting contract splitting rules.

## Arbitration

- adopting arbitration unreservedly – open to reasonable arbitration approaches of others.

# Europe — Netherlands

Signed; 78 Covered Tax Agreements (including the US) – Irish treaty not included as under negotiation

Expected effective date 1 January 2019

## **Treaty abuse**

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- adopting PPT in full.

## **Hybrid mismatch**

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- adopted anti-abuse rule for PE situated in third jurisdictions.

## **Permanent establishment**

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- adopted widened definition of agent
- exemption for certain PEs listed in DTA must be preparatory and auxiliary (option A) and anti-fragmentation rules
- adopting contract splitting rules (except for exploiting natural resources).

## **Arbitration**

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- adopting arbitration.

# Europe — Germany

Signed; 35 Covered Tax Agreements (including the US)

Germany to speak with each covered jurisdiction before ratification. If DTA jurisdiction did not sign the MLI, negotiations will begin bilaterally.

## Treaty abuse

- adopting PPT, reserved in 4 treaties that already have PPT.

## Permanent establishment

- not adopting dependent agent
- exemption for certain PEs listed in DTA must be preparatory and auxiliary (option A)
- not adopting anti-fragmentation rules
- not adopting contract splitting rules.

## Arbitration

- adopting arbitration.

# Europe — Switzerland

Signed; 14 Covered Tax Agreements

Switzerland to agree with 14 jurisdictions precise wording to amend existing DTAs. Once agreed, other treaty jurisdictions will be approached.

Public consultation expected by end of 2017. No referendum required.

Expected implementation date — 1 January 2019

## **Treaty abuse**

- adopting PPT, reserved in 7 treaties that already have PPT.

## **Permanent establishment**

- not adopting dependent agent
- not adopting changes to PE specific exemption activities (option A or option B)
- not adopting anti-fragmentation rules
- not adopting contract splitting rules.

## **Arbitration**

- adopting arbitration.



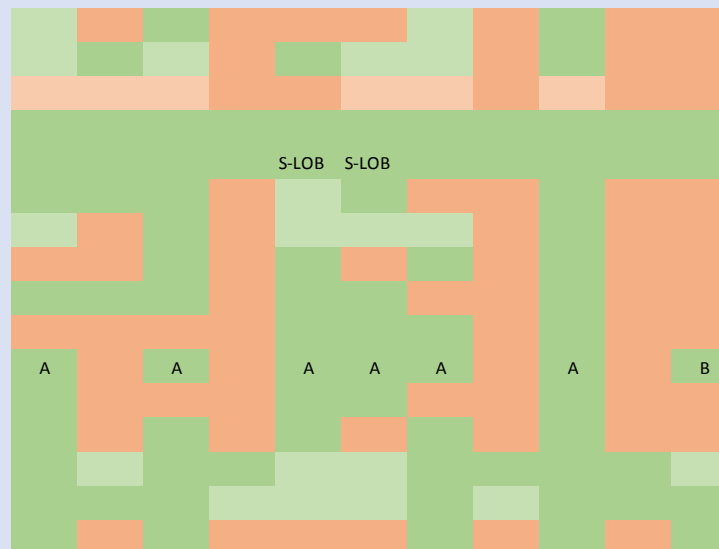
# ASPAC

Grant Wardell-Johnson, Partner in Charge, Australian Tax Centre, KPMG Australia

# ASPAC

	AUS	CHN	FIJ	HKG	IND	IDN	JPN	KOR	NZL	PAK	SGP	Total
No. of Treaties	44	105	11	37	92	71	66	91	40	63	82	702
Counter-party CTAs	29	47	6	28	47	22	32	45	27	27	47	357
% of Treaties Counter-party CTAs	66%	45%	55%	76%	51%	31%	48%	49%	68%	43%	57%	51%

Art 3	Transparent entities
Art 4	Dual resident entities
Art 5	Double tax
Art 6	Preamble
Art 7	Treaty Abuse
Art 8	Dividend transfers
Art 9	Real property holding
Art 10	Third country PEs
Art 11	Savings Clause
Art 12	Dependent Agent PE
Art 13	Specific Activity
Art 14	Contract splitting
Art 15	Definition
Art 16	Mutual Agreement Procedure
Art 17	Corresponding Adjustment
Art 18	Opt in Arbitration



Fully adopted  
Adopted with minor reservation

Counter-party can choose  
Not adopted

## Did not sign MLI

- Bangladesh
- Cambodia
- Laos
- Malaysia
- Mongolia
- Myanmar
- PNG
- Philippines
- Sri Lanka
- Thailand
- Vietnam.

## Intention to sign

- Mauritius.



# Latin America

Jose Manuel Ramirez, Partner, KPMG in the US



# Impact for Latin America

## LATAM countries that signed MLI/treaties covered

Argentina 17

Colombia 10

Mexico 61

Chile 34

Costa Rica 3

Uruguay 20

- BEPS actions — Mexico, Colombia, Chile, Brazil.
- Post-BEPS local tax policy: reality vs. fiction.
- Principal Purpose Test and S-LOB applied by all jurisdictions in the region.
- Detailed LOB not included by the countries that subscribed the agreement.
- Dependent Agent: widely adopted with some exceptions.

# Positions of LATAM

		ARG	CHL	COL	CRI	MEX	URY
Art 3	Transparent entities						
Art 4	Dual Residents						
Art 5	Double Tax	C					C
Art 6	Preamble						
Art 7	Treaty Abuse						
	S-LOB?						
	Pursue D-LOB?						
Art 8	Dividend Transfers						
Art 9	Real Property Cos						
Art 10	3rd Country PE						
Art 11	Saving Clause						
Art 12	DAPE						
Art 13	Specific Activity	A		A	A	A	A
	Anti-fragmentation?						
Art 14	Contract Splitting						
Art 15	Definition						
Art 16	MAP						
Art 17	Corresponding Adj.						
Art 18	Opt-in for Arbitration						

Fully adopted
Partial reservation

Permit other party to apply
Not adopted



# Canada and the US

Jesse Eggert, Principal, Washington National Tax, KPMG in the US

# Positions of Canada and the US

## Canada

- listed 75 of 94 total treaties
- minimalist approach at signature. Signed up only for:
  - minimum standard under Action 6 (plus statement that it intends to pursue detailed LOB)
  - minimum standard under Action 14
  - arbitration (baseball only).
- still considering final positions, which may change during ratification process.

## US

- did not join MLI
- many treaties already contain rules similar to MLI, e.g.:
  - detailed LOB that satisfied minimum standard
  - transparent entities
  - dual resident entities
  - third country PE
  - Saving Clause
  - Arbitration.
- Potentially challenging to obtain approval to sign and ratify multilateral treaty.



# Africa and the Middle East

Jesse Eggert, Principal, Washington National Tax, KPMG in the US

# Positions of Africa and the Middle East

		BFA	EGY	GAB	ISR	KWT	SEN	SYC	ZAF
Art 3	Transparent entities	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 4	Dual Residents	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 5	Double Tax	Not adopted	Not adopted	C	Not adopted	C	Not adopted	Not adopted	Not adopted
Art 6	Preamble	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 7	Treaty Abuse	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
	S-LOB?	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
	Pursue D-LOB?	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 8	Dividend Transfers	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 9	Real Property Cos	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 10	3rd Country PE	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 11	Saving Clause	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 12	DAPE	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 13	Specific Activity	A	A	A	A	A	A	Not adopted	A
Art 14	Contract Splitting	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 15	Definition	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 16	MAP	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 17	Corresponding Adj.	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted
Art 18	Opt-in for Arbitration	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted	Not adopted

Fully adopted

Partial reservation

Permit other party to apply

Not adopted

# Today's presenters

**Manal S. Corwin**

+ 1 202 533 3127

mcorwin@kpmg.com

**Jesse Eggert**

+1 202 533 5512

jeggert@kpmg.com

**Adrian Crawford**

+353 1410 1351

adrian.crawford@kpmg.ie

**Jose Manuel Ramirez**

+1 212 872 6541

josemanuelramirez@kpmg.com

**Grant Wardell-Johnson**

+61 2 9335 7128

gwardelljohn@kpmg.com.au

**Robin Walduck**

+44 20 7311 1816

Robin.Walduck@KPMG.co.uk



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