Euro Tax Flash from KPMG's EU Tax Centre

Multilateral BEPS Convention will enter into force on July 1, 2018

OECD BEPS – Multilateral Instrument

March 22, 2018, marks a milestone moment in the implementation of the OECD Base Erosion and Profit Shifting (BEPS) project. Following the deposit of the ratification instrument by a fifth jurisdiction (Slovenia), the Multilateral BEPS Convention (also known as the “Multilateral Instrument” or the “MLI”) will enter into force on July 1, 2018.

Background

The Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS ("Multilateral Instrument" or "MLI"), adopted in November 2016, was jointly developed by more than 100 jurisdictions under a mandate from the G20. Given the large number of treaties in effect between participating jurisdictions and the fact that bilateral negotiations and the implementation of amendments to a treaty are often lengthy processes, a multilateral instrument allows countries to include tax treaty-related BEPS measures in their treaties swiftly and effectively. The MLI does not amend the language of existing treaties, but rather works alongside covered tax treaties and modifies their application.

The BEPS measures that the MLI is aimed at implementing include those on hybrid mismatches (Action 2), treaty abuse (Action 6), permanent establishments (Action 7) and dispute resolution mechanisms (Action 14). While some of these measures represent minimum standards (the minimum standard on treaty abuse and the minimum standard on dispute resolution) and must therefore be implemented by all signatories – with some flexibility − the MLI also contains a number of optional provisions. Countries that adhere to the MLI can apply optional or alternative provisions, which must be notified to the OECD, and also opt out of certain provisions (completely or partially) by making a reservation. Countries can also choose which of their existing treaties will be modified through the MLI (“Covered Tax Agreements” or “CTAs”). A jurisdiction’s set of CTAs, notifications and reservations is labeled the “MLI position” and its final version is published once each jurisdiction has ratified the MLI, following domestic ratification procedures. Once a jurisdiction has ratified the MLI, its effects can be broadened by, for example, withdrawing a reservation or adding additional treaties to that jurisdiction's list of CTAs. However, new reservations cannot be made and existing notifications cannot be withdrawn.

A high-level signing ceremony was held on June 7, 2017, in Paris, where representatives of 68 jurisdictions signed the MLI. Ten more jurisdictions had signed the MLI as at March 22, 2018, and six others had expressed their intention to join in the near future. Signing the MLI only represents a country's commitment to its implementation, but not the instrument's ratification. According to its rules, the Multilateral Instrument only enters into force three months after five countries have ratified, accepted or approved it.

Ratification

On March 22, 2018, Slovenia deposited its instrument of ratification, becoming the fifth country to do so and marking the entry into force of the Multilateral Instrument on July 1, 2018. The other four countries to have ratified the MLI and deposited their instruments with the OECD are: Austria (September 22, 2017), the Isle of Man (October 19, 2017), Jersey (December 15, 2017), and Poland (January 23, 2018). Its entry into force will bring the MLI into legal existence only in these five jurisdictions and will take effect as follows:

- as from January 1, 2019, with respect to withholding taxes, and
- for taxable periods beginning on or after this date (i.e. after the expiration of a period of six months from its entry into force), with respect to all other taxes.
  For calendar year taxpayers that are tax resident in one of the five jurisdictions, this means that the MLI will enter into effect on January 1, 2019, with respect to all covered taxes.

The MLI will enter into force for additional jurisdictions on the first day following a three-month period after the submission of their respective ratification instruments. Once ratified, the Multilateral Instrument will only affect double tax treaties concluded with other jurisdictions that have ratified the MLI and that have also included that treaty in their list of CTAs.

EU Tax Centre comment

The MLI is the first convention of its kind and is expected to affect a large number of existing tax treaties (over 1,200, according to the OECD). Its entry into force a little over a year after the signing ceremony suggests that the signatories are committed to its implementation and to that of the wider OECD BEPS measures.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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