

Multilateral Instrument Implementing the Treaty Related BEPS Provisions (Updates)



In [Tax Alert Issue 28 | June 2017](#), we shared details on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (Multilateral Instrument or MLI). This alert is an update on Singapore's position on the MLI.

What is the MLI?

The MLI is an agreement negotiated under Action 15 of the OECD/G20 BEPS Project. As opposed to bilateral Double Taxation Agreements (DTA) which can often take many years to negotiate, the MLI is intended to allow jurisdictions to swiftly amend their tax treaties to include the tax treaty-related BEPS recommendations in multiple DTAs.

The MLI includes both mandatory provisions (i.e. the minimum standards under the BEPS Project) as well as non-mandatory provisions. Jurisdictions have the flexibility to determine how its DTA network would be amended by the MLI.

When does the MLI take effect?

Singapore deposited its instrument of ratification on 21 December 2018 and the MLI will enter into force on 1 April 2019.

The complete list of Singapore's reservations and notifications at the point of ratification may be downloaded from this [link](#).

As of 11 January 2019, 18 countries (including Singapore) have deposited their instrument of ratification.

Noteworthy outcomes

At the point of ratification, Singapore intends for the MLI to apply to 86 existing DTAs, of which:

- 6 will not be changed as the countries have not chosen Singapore as a covered tax agreement (CTA) (Germany, Mauritius, Norway, Sweden, Switzerland and Tunisia)
- 23 are subject to the respective country signing the MLI (Albania, Bahrain, Bangladesh, Belarus, Brunei, Cambodia, Ecuador, Ethiopia, Ghana, Kenya, Laos, Libya, Mongolia, Morocco, Myanmar, Oman, Papua New Guinea, Philippines, Rwanda, Sri Lanka, Thailand, Uzbekistan and Vietnam)
- 57 are to be changed with the signing of the MLI and they are:

| | | |
|----------------|---------------|----------------------|
| Australia | Indonesia | Pakistan |
| Austria | Ireland | Panama |
| Barbados | Isle of Man | Poland |
| Belgium | Israel | Portugal |
| Bulgaria | Italy | Qatar |
| Canada | Japan | Romania |
| China | Jersey | Russia |
| Cyprus | Kazakhstan | San Marino |
| Czech Republic | Kuwait | Saudi Arabia |
| Denmark | Latvia | Seychelles |
| Egypt | Liechtenstein | Slovak Republic |
| Estonia | Lithuania | Slovenia |
| Fiji | Luxembourg | South Africa |
| Finland | Malaysia | Spain |
| France | Malta | Turkey |
| Georgia | Mexico | Ukraine |
| Guernsey | Netherlands | United Arab Emirates |
| Hungary | New Zealand | United Kingdom |
| India | Nigeria | Uruguay |

Effective dates and next steps

A CTA between Singapore and its DTA partner will only be amended by the MLI if both treaty partners share the same position on the provisions of the MLI, and after both parties have deposited their instrument of ratification with the Secretary-General of the OCED. The amendments generally take effect from the basis period following the expiration of a period of six calendar months after the MLI enters into force for both jurisdictions.

Key provisions adopted by Singapore under the MLI

Singapore will be adopting the following key mandatory provisions in the MLI, amongst others:

1. To include a statement of intent in the preamble of the CTA that states the DTA is to eliminate double taxation without creating opportunities

for non-taxation or reduced taxation through tax evasion or avoidance in the "Purpose of a CTA" article.

2. In the article on "Preventing treaty abuse", Singapore will include a general anti-abuse rule in the covered tax agreement. This rule is commonly known as the Principal Purpose Test (PPT).

The Inland Revenue Authority of Singapore (IRAS) has clarified that the PPT would not affect businesses with bona fide commercial transactions or operations, and that it seeks to address abusive arrangements where the purpose is to secure a benefit under the DTA in a manner that is contrary to the objective and purpose of the DTA.

- Singapore will include a mechanism to allow a Singapore resident taxpayer to seek assistance from IRAS when the taxpayer encounters taxation in a DTA jurisdiction that is not in accordance with the intended application of the DTA under the article of the "Mutual agreement procedure".

Singapore will also be adopting a number of non-mandatory provisions in the MLI which it believes will be beneficial to its taxpayers, such as mandatory arbitration provisions.

KPMG observations

The mechanisms provided by MLI to address artificial avoidance of a permanent establishment and hybrid mismatches have not been adopted by Singapore for its DTAs with treaty partners. As such, the most wide-ranging impact from the ratification of the MLI will be the effect of the PPT, especially on cross-border holding structures.

Singapore has been the preferred holding jurisdiction for investments into the Asia Pacific region for numerous reasons including its business-friendly environment and stable political conditions. As the PPT is an inherently subjective test, it may create uncertainty on the effectiveness and viability of certain holding structures. In light of the MLI coming into force, it is vital for multinational businesses to proactively reassess the level of the substance of their cross-border structures, if it is sufficient and whether there is a need for preventive measures.

How we can help

As a committed tax advisor to our clients, we welcome the opportunity to discuss the relevance of the MLI changes to your business.



Contact us

Tay Hong Beng

Head of Tax

T: +65 6213 2565

E: hongbengtay@kpmg.com.sg

Harvey Koenig

Partner, Tax

T: +65 6213 7383

E: harveykoenig@kpmg.com.sg

Dilpreet Singh Obhan

Director, Tax

T: +65 6213 2635

E: dilpreetsingh@kpmg.com.sg

KPMG

16 Raffles Quay #22-00

Hong Leong Building

Singapore 048581

T: +65 6213 3388

F: +65 6220 9419

E: tax@kpmg.com.sg

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