KPMG

Tax Alert

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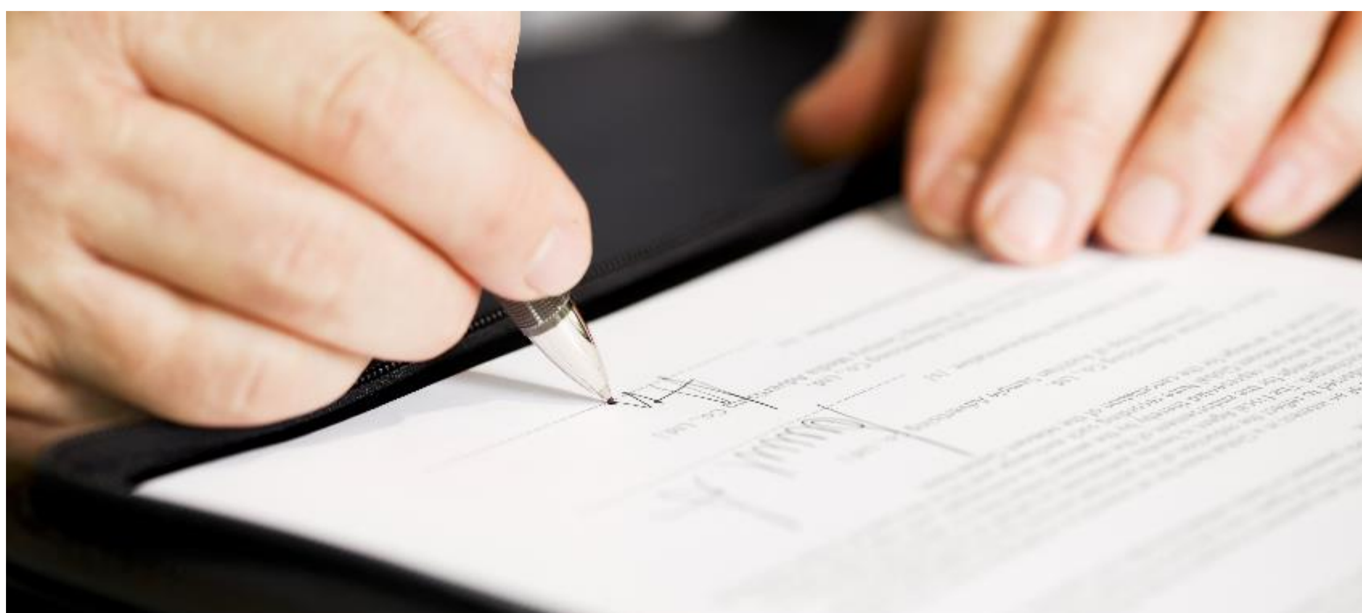
Mauritius signed the Multilateral Instrument implementing the Treaty Related BEPS Provisions



Background

On 7 June 2017, the Organisation of Economic Cooperation and Development (OECD) hosted a signing ceremony in Paris at which representatives of 68 jurisdictions signed the Multilateral Instrument (MLI). Another nine jurisdictions including Mauritius expressed their intention of becoming signatory of the MLI.

The MLI was developed by the OECD to allow jurisdictions to swiftly implement measures developed under the Base Erosion and Profit Shifting project (BEPS) to tackle tax avoidance/evasion.

The measures under the MLI include, inter-alia, anti-treaty abuse rules (principal purpose test or limitation of benefit clause) alongside a new preamble reinforcing anti-treaty abuse rules, permanent establishment (PE) rules, Arbitration rules, modernization of Mutual Agreement Procedures (MAP) and Transfer pricing articles in tax treaties.

More importantly, to maximize participation, the MLI provides signatories with significant flexibility to decide which portions of the MLI to adopt, modify, or reject. Specifically, the MLI grants jurisdictions:

- The 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 Action 6 (Treaty Abuse) and 14 (mutual agreement procedures) agreed as part of the BEPS project
- Ability to opt out completely or partially of certain provisions with respect to all or with respect to certain CTAs, and
- Ability to apply optional or alternative provisions.

Each jurisdiction has to submit a list of the tax treaties intended to be covered under the MLI and the intended measures they opt to implement upon signature of the MLI.

The conclusion of the MLI project may impact more than 1,100 tax treaties worldwide and will undoubtedly change the way of doing business.

Impact of MLI on Mauritius treaty network

Mauritius signed the MLI on 5 July 2017. Out of its 42 DTAs, Mauritius has nominated 23 as potential CTAs. The MLI generally only become operative when both parties elect to treat a Double Tax Agreement (DTA) as a CTA.

However, out of these 23 countries, eight have not signed the MLI (Barbados, Republic of Congo, Lesotho, Madagascar, Oman, Qatar, Swaziland and United Arab Emirates), leaving the following 15 of the 23 DTAs chosen by Mauritius to be changed by the signing of the MLI.

Belgium
Cyprus
Germany
Italy
Luxembourg
Monaco
South Africa
United Kingdom
Croatia
France
Guernsey
Kuwait
Malta
Seychelles
Sweden

For the remaining tax treaties, Mauritius will discuss bilaterally with the respective treaty partners in view to implement the minimum standards under the BEPS project by end of 2018.

Key provisions to be adopted by Mauritius under the MLI

Mauritius 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) as an interim measure. As far as possible, Mauritius intends to adopt a limitation on benefits provision through bilateral negotiation.

2. **The BEPS minimum standard for enhancing dispute resolution**

   When a Mauritius resident taxpayer encounters taxation which is not in accordance with the intended application of the DTA provisions, the taxpayer can seek assistance from Mauritius Revenue Authority to contact the treaty partner to resolve the dispute.

3. **Mandatory binding arbitration**

   Mauritius 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.

Entry into force

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.

How can we help?

We would be pleased to discuss the impact of MLI on your cross border transactions where they rely on the provisions of an existing DTA to avoid double taxation or ensure your international operations are not adversely impacted by the new changes.

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