

Multilateral Instrument update - impact for Mauritius structures



In Tax Alert [Issue 28](#) | June 2017 and Tax Alert [Issue 01](#) | February 2019, 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). In this issue, we provide an update on the MLI, which entered into force for Singapore on 1 April 2019.

Of particular note, on 18 October 2019 Mauritius ratified the MLI, which will enter into force for Mauritius from 1 February 2020. Existing structures with payments between Singapore and Mauritius that enjoy double tax treaty benefits may soon be at risk of challenge under the Principal Purpose Test (PPT) in the MLI.

Background

The MLI is an agreement negotiated under Action 15 of the OECD/G20 BEPS Project, to enable amendment of bilateral Double Taxation Agreements (DTA) to reflect the tax treaty-related BEPS recommendations.

The most significant impact of the MLI for many groups and structures is the anti-treaty shopping **Principal Purpose Test**, which can apply to deny treaty benefits where it is reasonable to conclude that one of the principal purposes of the arrangement or transaction was to obtain a treaty benefit.

Date of effect

The MLI has effect:

- for taxes withheld at source, the amendments will apply to amounts paid or credited to non-residents on or after the first day of the next calendar year that begins after the MLI enters into force for both jurisdictions;
- for all other taxes, the amendments generally take effect from the taxable (basis) period following the expiration of a period of six calendar months after the MLI enters into force for both jurisdictions.

Mauritius / Singapore structures

As Mauritius and Singapore have both now ratified the MLI, the Singapore-Mauritius Double Tax Agreement is now considered a Covered Tax Agreement (CTA) that will be amended by the MLI. At the time of signing the MLI on 5 July 2017, Mauritius had not nominated the Singapore-Mauritius DTA to be amended by the MLI, but it changed this position subsequently (this was confirmed as final in the instrument of ratification deposited on 18 October 2019).

There are a significant number of financing and intellectual property structures which enjoy withholding tax rates of nil for interest and royalties under the Singapore-Mauritius DTA. Importantly, arrangements that were set up before the MLI came in are not grandfathered, so even structures that have been in place for many years and may have withstood tax authority scrutiny can be adversely impacted by the PPT.

The PPT can apply to withholding taxes on payments from Singapore to Mauritius from 1 January 2021 and for payments from Mauritius to Singapore from as early as 1 February 2020 (applying to the first taxable period starting on or after that date). The MLI can apply for other taxes for taxable periods starting on or after 1 August 2020.

Mauritius structures also need to consider domestic law changes introduced in recent years, including for Global Business Licences, partial exemption regime, economic substance requirements and controlled foreign company rules.

Other Singapore treaty partners

At the point of ratification on 21 December 2018, Singapore noted its intention to apply the MLI to 86 existing DTAs, of which 61 are "matched" as CTAs which will be amended by the MLI. The 61 CTAs are set out below (Albania, Mauritius, Morocco and PNG are new to the CTA list, having matched post Singapore's MLI ratification):

Singapore CTAs: Application to withholding taxes for payments on or after 1 January 2020

| | | | | |
|-----------|--------------------|---------------------|---------------------|----------------------|
| Australia | France | Israel ¹ | Netherlands | Ukraine |
| Austria | Georgia | Japan | New Zealand | United Arab Emirates |
| Belgium | Guernsey | Jersey | Poland | United Kingdom |
| Canada | India ¹ | Lithuania | Russia ² | |
| Denmark | Ireland | Luxembourg | Slovak Republic | |
| Finland | Isle of Man | Malta | Slovenia | |

Singapore CTAs: Application to withholding taxes for payments on or after 1 January 2021 or later (to date, only Mauritius and Latvia have confirmed their date of entry into force)

| | | | | |
|----------------|------------|------------------------|------------|--------------|
| Albania | Estonia | Latvia | Pakistan | Saudi Arabia |
| Barbados | Fiji | Liechtenstein | Panama | Seychelles |
| Bulgaria | Hungary | Malaysia | PNG | South Africa |
| China | Indonesia | Mauritius ¹ | Portugal | Spain |
| Cyprus | Italy | Mexico | Qatar | Turkey |
| Czech Republic | Kazakhstan | Morocco | Romania | Uruguay |
| Egypt | Kuwait | Nigeria | San Marino | |

¹ Effective date of 1 January 2020 for payments from Singapore only. The MLI will have effect on payments to Singapore where such payments occur on or after the first day of the taxable period that begins on or after:

(a) For India: 1 October 2019

(b) For Israel: 1 April 2019

(c) For Mauritius: 1 February 2020

² Although entry into force for Russia was 1 October 2019, the effective date has not yet been confirmed as it is subject to notification under Article 35(7)(b) of the MLI.

[Based on Singapore's Status of List of Reservations and Notifications deposited on 21 December 2018 and the signatories and parties status as of 30 October 2019].

For some treaty partners, Singapore has not chosen to amend the existing DTA using the MLI, but has instead negotiated to amend the DTA for BEPS related measures on a bilateral basis (such as for Brazil and South Korea).

KPMG observations

The PPT has wide ranging effect, with particular risk for structures involving intermediary entities with limited substance or commercial purpose that receive interest, royalties, dividends or other payments that would otherwise be subject to higher withholding taxes absent tax treaty protection. These can include investment fund platforms, holding company arrangements, leasing or licensing arrangements and funding flows. The PPT is not limited to related party arrangements and can also apply where treaty benefits are obtained by third parties.

Also under the MLI, entities with business activities in some jurisdictions may also be subject to

increased risk of triggering a permanent establishment where a dependent agent habitually plays the principal role in negotiating contracts on behalf of the enterprise.

How we can help

We welcome the opportunity to discuss the impact of these changes on your cross border arrangements and possible mitigation strategies. Those with arrangements to which the PPT could apply from 1 January 2020 must urgently assess the risk. Mauritius and Singapore intellectual property and financing structures must also act quickly to assess the risk to ensure adequate time is left to restructure or refinance if needed.

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