



June 2017

OECD Multilateral Convention signed on 7 June 2017

On 7 June 2017 the official ceremony of signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting¹ (hereinafter: the “Convention” or “MLC”) was held in Paris.

MLC signatories

The Convention was signed by 68 countries, including all EU member states, apart from Estonia, and all OECD member states (apart from the United States and Estonia).

Although the United States did not sign the Convention and did not declare its willingness to join the MLC, it cannot be excluded that the US position will change in the future.

On the other hand, Estonia - similarly to seven other countries, including Cameroon, Jamaica and Lebanon - declared its willingness to accede to the Convention. It is anticipated that many other countries will join the MLC in the near future.

The OECD published on its official website positions of the signatories of the Convention, which list the bilateral double tax treaties (DTTs) to be covered by the MLC and the scope of intended amendments (i.e. options chosen and reservations made).

Position of Poland

Poland listed in its position 78 DTTs to be covered by the MLC.

It is worth noting that at this stage not all of the DTTs indicated in the position of Poland are with countries that have already acceded to the Convention. Thus, in the case of the DTTs with countries not being signatories to the MLC yet, any changes will only enter into force when the other country joins the MLC (which may take place in the future).

Scope of the planned amendments

The most important amendments notified in the Polish position concern:

- introduction of the limitation of benefit clause (LOB clause) - in this respect Poland has made a statement that the LOB clause in the wording envisaged in the MLC is intended only as an interim measure as it is planned to renegotiate the DTTs in order to adopt the LOB clause in the DTTs in addition to or in place of the clause provided in the MLC;

- introduction of the tax credit method as a general mechanism for avoiding double taxation;
- introduction of the real estate clause to the DTTs;
- the amendments to the permanent establishment provisions will not be introduced - as a result, in this respect, the entry into force of the MLC should not affect the current wording of the DTTs.

Next steps

The amendments to the DTTs are subject to prior ratification of the MLC. Only when the parties of a given DTT ratify the MLC in accordance with their domestic procedures, will the proposed changes to the DTTs enter into force (the date of entry into force of the individual provisions of the Convention is regulated by the MLC).

According to the information provided on the website of the Polish Ministry of Finance, the OECD assumes that entry into force of the first amendments to the DTTs will take place at the beginning of 2018.

Please contact us if you would like to obtain more information on the these changes or discuss their impact on your business.

¹ *Base Erosion and Profit Shifting*, project carried out by OECD and G20 countries that refers to tax avoidance strategies that exploit gaps and mismatches in tax

rules to artificially shift profits to low or no-tax locations

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