

Japan and Ireland submit instruments of ratification for MLI

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Executive summary

Based on the reservations and notifications submitted to the Organisation for Economic Co-operation and Development (OECD) by Japan, through its instrument of ratification, on 26 September 2018 and by Ireland, on 29 January 2019, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) will apply to the tax treaty between Japan and Ireland. The tax treaty with Ireland will be the 10th tax treaty for Japan to which the MLI will apply.¹

Detailed discussion

Background

On 7 June 2017, Japan signed the MLI.² On 26 September 2018, Japan deposited its instrument of ratification of the MLI with the OECD, and submitted its MLI positions and a list of 39 income tax treaties which Japan entered into with other jurisdictions that it wishes to designate as Covered Tax Agreements (CTAs), i.e., tax treaties to be amended through the MLI, including the Japan-Ireland Income Tax Treaty (the Treaty).

On 29 January 2019, Ireland deposited its instrument of ratification of the MLI with the OECD, and submitted its MLI positions.

The provisions of the MLI that apply to the Treaty include:

- ▶ Article 3(1) - Provisions regarding income derived by or through an entity or arrangement that is treated as fiscally transparent
- ▶ Article 6(1) - Preamble language describing the intent of the Contracting Jurisdictions that the tax treaty will not create opportunities for non-taxation or reduced taxation
- ▶ Article 6(3) - Preamble language referring to a desire of the Contracting Jurisdictions to develop their economic relationship and to enhance their co-operation in tax matters
- ▶ Article 7(1) - Provisions that deny the benefits under the tax treaty where the principal purpose or one of the principal purposes of any arrangement or transaction was to obtain those benefits
- ▶ Article 9(4) - Provisions for taxation on capital gains from alienation of shares or interests of entities deriving their value principally from immovable property
- ▶ Article 13(4) - Provisions for combining business activities carried on by closely related persons for the purpose of determining whether a permanent establishment exists
- ▶ Article 15 - Provisions for the definition of a person closely related to an enterprise
- ▶ Article 16(1), first sentence - Provision for presentation of a case of taxation not in accordance with the provisions of the tax treaty for a mutual agreement procedure
- ▶ Article 16(1), second sentence - Provision stating that a case must be presented for a mutual agreement procedure within three years
- ▶ Article 16(2), second sentence - Provision providing that any agreement reached under a mutual agreement procedure must be implemented
- ▶ Article 17(1) - Provisions regarding corresponding adjustments to taxation in accordance with arms-length principle
- ▶ Part VI - Provisions regarding arbitration for resolving a case of taxation not in accordance with the provisions of the tax treaty
- ▶ Article 19(12) - Provisions that provide that an unresolved issue arising from the case on which a decision has already been rendered by a court or administrative tribunal should not be submitted to arbitration

- ▶ Article 23(2) - Provisions regarding the arbitration process in which the arbitration panel should make its own decision on the issues submitted to arbitration based on information provided by the competent authorities
- ▶ Article 23(5) - Provisions regarding non-disclosure obligation on the presenters of the case for any information received during the course of arbitration proceedings
- ▶ Article 28(2)(a) - Provisions regarding the scope of cases eligible for arbitration

Entry into force and effect

The MLI will enter into force on 1 January 2019 for Japan and on 1 May 2019 for Ireland.

The provisions of the MLI will have effect with respect to:

1. Taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 January 2020
2. All other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after 1 November 2019

Article 16 (Mutual Agreement Procedure) will have effect for a case presented to the competent authority of Japan or Ireland on or after 1 May 2019, except for cases that were not eligible to be presented as of that date under the existing Japan/Ireland income tax treaty prior to its modification by the MLI.

The provisions of Part VI, Arbitration will have effect with respect to:

1. Cases presented to the competent authority of Japan or Ireland as described in paragraph 1(a) of Article 19 (Mandatory Binding Arbitration), on or after 1 May 2019.
2. Cases presented to the competent authority of Japan or Ireland prior to 1 May 2019 (only to the extent that the competent authorities of Japan and Ireland agree that Part VI will apply to that specific case), on the date when Japan and Ireland have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 (Mandatory Binding Arbitration), along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of Japan or Ireland.

Endnotes

1. The other nine tax treaties are the Japanese tax treaties with Australia, France, Israel, New Zealand, Poland, Singapore, Slovakia, Sweden and the United Kingdom.
2. See EY Global Tax Alert, [Japan passes bill on multilateral instrument](#), dated 6 June 2018.

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