

Japan and Finland 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 Finland, on 25 February 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 Finland. The tax treaty with Finland will be the 11th 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-Finland Income Tax Treaty (the Treaty).

On 25 February 2019, Finland 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 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 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 16(1) - Provisions for presenting a case of taxation not in accordance with the provisions of the tax treaty for a mutual agreement procedure (MAP)
- ▶ Article 16(1) - Provisions providing that a case must be presented for a MAP within three years
- ▶ Article 16(2) - Provisions that provide that any agreement reached under a MAP shall be implemented
- ▶ Article 17(1) - Provisions regarding corresponding adjustments to taxation in accordance with arm's-length principles
- ▶ 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 exclude from arbitration an unresolved issue arising from the case on which a decision has already been rendered by a court or administrative tribunal
- ▶ Article 23(2) - Provisions regarding the arbitration process in which the arbitration panel shall make its own decision on the issues submitted to arbitration based on information provided by the competent authorities
- ▶ Article 23(5) - Provisions regarding the 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 June 2019 for Finland.

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 (Japan and Finland)
2. All other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after 1 December 2019
3. All other taxes levied by Finland, for taxes levied with respect to taxable periods beginning on or after 1 January 2020

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

1. Cases presented to the competent authority of Japan or Finland (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration), on or after 1 June 2019.
2. Cases presented to the competent authority of Japan or Finland prior to 1 June 2019, on the date when both Japan or Finland 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 Finland (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)) according to the terms of that mutual agreement.

Endnotes

1. The other ten tax treaties are the Japanese tax treaties with Australia, France, Ireland, 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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