

## Japan and The Netherlands submit instruments of ratification for MLI

---

### **NEW!** EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### Executive summary

Based on the reservations and notifications submitted to the OECD<sup>1</sup> by Japan and the Netherlands, through their instruments ratification, on 26 September 2018 and 29 March 2019, respectively, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) will apply to the Japan-Netherlands tax treaty. The tax treaty with the Netherlands will be the 12th tax treaty for Japan to which the MLI will apply.<sup>2</sup>

### Detailed discussion

#### Background

On 7 June 2017, Japan signed the MLI.<sup>3</sup> 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-Netherlands Income Tax Treaty (the Treaty).

On 29 March 2019, the Netherlands 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 4(1) - Provisions that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions for the purposes of the tax treaty
- ▶ Article 5(2) - Provisions that limit application of the exemption method for elimination of double taxation
- ▶ 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 cooperation 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(1) - Provisions regarding requirements for determining whether shares or interests of entities derive their value principally from immovable property
- ▶ Article 10(1) to (3) - Provisions that deny the benefits under the tax treaty with respect to certain income attributable to a permanent establishment situated in a third jurisdiction
- ▶ Article 13(2) - Provisions regarding an activity that is deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business
- ▶ 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 - Provisions for presentation of a case of taxation not in accordance with the provisions of the tax treaty for a mutual agreement procedure
- ▶ Article 17(1) - Provisions regarding corresponding adjustments to taxation in accordance with arm's-length principle

### Entry into force and effect

The MLI will enter into force on 1 January 2019 for Japan and on 1 July 2019 for the Netherlands.

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 Japan or the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020

Article 16 (Mutual Agreement Procedure) will have effect with respect to the Treaty for a case presented to the competent authority of Japan or the Netherlands on or after 1 July 2019, except for cases that were not eligible to be presented as of that date under the Treaty prior to its modification by the MLI, without regard to the taxable period to which the case relates.

---

## Endnotes

1. Organisation for Economic Co-operation and Development.
2. The other 11 tax treaties are the Japanese tax treaties with Australia, Finland, France, Ireland, Israel, New Zealand, Poland, Singapore, Slovakia, Sweden and the United Kingdom.
3. See EY Global Tax Alert, [Japan passes bill on multilateral instrument](#), dated 6 June 2018.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young Tax Co., Tokyo**

- ▶ Jonathan Stuart-Smith      jonathan.stuart-smith@jp.ey.com

**Ernst & Young LLP (United States), Japan Tax Desk, New York**

- ▶ Hiroaki Ito      hiroaki.ito1@ey.com

**Ernst & Young LLP (United States), Asia Pacific Business Group, New York**

- ▶ Chris Finnerty      chris.finnerty1@ey.com
- ▶ Kaz Parsch      kazuyo.parsch@ey.com
- ▶ Bee-Khun Yap      bee-khun.yap@ey.com

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

© 2019 EYGM Limited.  
All Rights Reserved.

EYG no. 001784-19Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](http://ey.com)**