25 June 2019

Global Tax Alert

Indian Government ratifies Multilateral Instrument

Executive summary

On 12 June 2019, the Indian Government announced its ratification of the *Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI).[1] The MLI will modify provisions of existing Indian tax treaties that qualify as a Covered Tax Agreement (CTA).[2] The impact of the MLI on India's CTAs are significant and requires careful consideration for existing and proposed transactions and structures. As a next step, India will need to deposit its ratified MLI with the OECD[3] with its final positions.

Detailed discussion

Background

The MLI has been signed by 88 countries,[4] of which 27 countries[5] have already submitted a ratified copy with the OECD. India signed the MLI on 7 June 2017 and at that time, submitted a provisional list of tax agreements that would be modified by the MLI and the provisional positions on the articles of the MLI. On 12 June 2019, the Indian Cabinet announced the MLI ratification.

Impact of ratification

After the ratification, India must perform the following procedures to implement the MLI: (i) submit the ratified copy of the MLI with the OECD; (ii) complete internal procedures for each CTA to make the MLI effective; and (iii) notify the OECD and CTA partner of the completion of its internal procedures. The details on the final positions, however, have not yet been released.

Date of entry into effect for India's CTAs: India has adopted an optional provision under the MLI, under which the date of entry into effect for India's CTAs would be determined 30 days after the OECD receives notification from both India and its tax treaty partner regarding the completion of their respective internal procedures (referred to as the "optional relevant date") as specified in the following manner:

Type of tax	Date of entry into effect of Indian CTAs
For withholding taxes	First day of the next taxable period or calendar year that begins on or after the "optional relevant date"
For other taxes	Taxable period that begins on or after the expiration of six-calendar months from the "optional relevant date"

For example, if India and a treaty partner notify the OECD by 31 August 2019, the MLI would be effective in India for a CTA from 1 April 2020 with respect to both withholding and other taxes.

Implications

The ratification of the MLI is a defining moment in India's international tax policy and is another milestone in the implementation of the treaty-based BEPS recommendations. While India's final positions will be known only once the ratification instrument is filed with the OECD, India's provisional positions provide a direction of the likely changes that include strict anti-avoidance measures, lower permanent establishment thresholds and improved dispute resolution provisions.

The impact of the MLI on existing and proposed transactions and structures would need to be carefully considered, especially in light of the lack of specific grandfathering provisions.

Endnotes

1. Base Erosion and Profit Shifting.
2. Tax treaties that would be modified by the MLI.
3. Organisation for Economic Co-operation and Development.
4. As of 18 June 2019.
5. Australia, Austria, Curaçao, Finland, France, Georgia, Guernsey, Ireland, Isle of Man, Israel, Japan, Jersey, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Poland, Russia, Serbia, Singapore, Slovak Republic, Slovenia, Sweden, United Arab Emirates, and United Kingdom as on 18 June 2019.

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