

## Belgium deposits instrument of ratification for MLI

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### Executive summary

On 26 June 2019, Belgium deposited its instrument of ratification with the Organisation for Economic Co-operation and Development (OECD) for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI), together with its definitive MLI positions and a list of 99 tax treaties which Belgium entered into with other jurisdictions that it wishes to designate as Covered Tax Agreements (CTAs).

Belgium finalized the formal adoption procedure of the MLI on 6 May 2019.

The federal and regional parliaments have all ratified the MLI. The only remaining step is for publication of the federal legislation in the Belgian *Official Gazette*.

### Detailed discussion

#### Covered Tax Agreements

For a treaty to be covered by the MLI, both signatories need to have: (i) joined the MLI; (ii) included each other on their list of CTAs; and (iii) deposited their instruments of ratification with the OECD.

At the time of signature of the MLI on 7 June 2017, Belgium submitted a list of 98 treaties concluded with other jurisdictions that it wished to designate as CTAs. In its' ratification instrument, the total number of listed agreements increased to 99. Belgium has added the tax treaties with Botswana and the Netherlands and removed the tax treaty with Taiwan. Tax treaties that have not been included on the list as CTAs, such as the tax treaties with Germany, Japan, Norway and Switzerland, have been or are expected to be renegotiated on a bilateral basis to align with the OECD's Base Erosion and Profit Shifting (BEPS) action plan.

Also, the initial reservation to article 12, which tackles artificial avoidance of the permanent establishment status through commissionaire arrangements, has been eliminated and replaced with the required notification.<sup>1</sup>

### Explanatory statement

In analyzing the extent to which the MLI may affect a specific situation, careful consideration should be given to the provisions of the MLI as well as to the explanatory statement to the MLI, which was adopted at the same time on 24 November 2016.<sup>2</sup> The purpose of the explanatory statement is to provide clarification of the approach taken in the MLI and how each provision is intended to impact CTAs covered by the MLI. Among others, it includes descriptions of the types of treaty provisions which are intended to be covered and the ways in which they are intended to be modified.

Further insights on the final MLI positions (including reservations and options) being adopted by Belgium are available in the explanatory statement released upon the approval of the Belgian legislation.

### "Synthesized" text of revised tax treaties

The MLI does not amend or override existing tax treaties. It is applied alongside the CTAs and modifies their application to implement BEPS actions. Similar to other jurisdictions, Belgium intends to release synthesized versions of the CTAs as modified by the MLI (initially for the CTAs with the United Kingdom, France and Luxemburg), (i) reflecting the options and reservations chosen by Belgium and the other treaty party and (ii) displaying the modifications made to the specific treaty by the MLI. These synthesized texts of the tax treaties modified by the MLI will be published on the website of the Belgian tax authorities.

### Entry into force and effects

The MLI will enter into force for Belgium on 1 October 2019, i.e., the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of the instrument of ratification with the OECD. The provisions of the MLI with respect to a specific CTA will have effect after both Belgium and the other treaty party to the relevant CTA have deposited their instrument of ratification and after a specific time has passed, with a further distinction for different MLI provisions as follows:

- a. With respect to taxes withheld at source: the MLI provisions will have effect where the event giving rise to such taxes occurs as from 1 January 2020 for the Contracting Jurisdictions that have already deposited their instrument of ratification, acceptance or approval, or that will deposit it before the end of September 2019. For other Contracting Jurisdictions it will have effect on or after the first day of the calendar year that begins on or after the date on which the MLI enters into force for that other specific Contracting Jurisdiction. For example, if the date of entry into force for the other Contracting Jurisdiction is 1 February 2020, the provisions of the MLI with respect to taxes withheld at source, will have effect where the event giving rise to such taxes occurs on or after 1 January 2021.
- b. With respect to all other taxes: the MLI provisions will have effect with respect to all non-withholding taxes levied in respect of taxable periods beginning as from 1 April 2020 for the Contracting Jurisdictions which have deposited their instrument of ratification, acceptance or approval before the end of June 2019. For other Contracting Jurisdictions it will enter into effect with respect to taxable periods, beginning on or after the expiration of a period of six calendar months, starting as from the date on which the MLI enters into force for that other specific Contracting Jurisdiction. For example, if the date of entry into force for the other Contracting Jurisdiction is 1 February 2020, the provisions of the MLI will then be applicable to all non-withholding taxes with respect to taxable periods, starting on or after 1 August 2020 (i.e., six-month period after the latest date of entry into force).

## Endnotes

1. See EY Global Tax Alerts, [Belgium acts to ratify MLI and revises position on commissionaire arrangements](#), dated 7 November 2018 and [Belgium signs Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS and submits its MLI positions](#), dated 21 June 2017, for specific MLI positions taken by Belgium and a general analysis respectively.
2. <https://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>.

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