

Global Tax Alert

News from EY Americas Tax

Canada: Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting to come into force on 1 December 2019

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EY Americas Tax

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Executive summary

On 29 August 2019, Canada deposited its instrument of ratification for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI). The MLI will enter into force vis-à-vis Canada on 1 December 2019. Furthermore, the MLI will enter into effect for any particular covered tax treaty in accordance with the provisions set forth in its "entry into effect" articles and will apply to some of Canada's tax treaties with effect as early as 1 January 2020. The MLI effectively amends the treaties between jurisdictions upon its ratification by them.

Detailed discussion

Background

The MLI is a multilateral convention signed to date by over 85 jurisdictions as part of the Organisation for Economic Co-operation and Development (OECD)/G20 initiative to counter what was perceived as base erosion and profit shifting (BEPS). BEPS refers to international tax planning that may shift profits between locations. The MLI strives to amend bilateral tax treaties through an expedited and aggregated process, thereby reducing the requirement for individual states to enter into possibly lengthy bilateral negotiations. On 7 June 2017, Canada became a signatory and party to the MLI.

For more information refer to the following EY Tax Alerts:

- ▶ [Canada and 67 other jurisdictions sign the MLI](#) dated 14 June 2017
- ▶ [Canada signs the MLI: some further observations](#) dated 29 June 2017

The MLI will modify the tax treaties that Canada has designated as covered tax agreements (CTAs), subject to the corresponding CTA treaty partner having also ratified the MLI and designated its tax treaty with Canada as part of its own CTAs – accordingly, as of 29 August 2019, the date of ratification, Canada's tax treaties with the following 24 jurisdictions will be affected:

Australia	Austria	Belgium	Finland
France	India	Ireland	Israel
Japan	Lithuania	Luxembourg	Malta
Netherlands	New Zealand	Poland	Russian Federation
Serbia	Singapore	Slovak Republic	Slovenia
Sweden	Ukraine	United Arab Emirates	United Kingdom

Canada also provided its updated list of reservations and notifications (the list Canada had provided to the OECD on signing the MLI in 2017 was only provisional). The list has been updated to reflect the following nine additional jurisdictions that have been designated as CTAs by Canada (as previously announced by Finance on 6 February 2019 during the House of Commons Standing Committee on Finance study of the MLI implementing legislation, Bill C-82): Algeria, Armenia, Ivory Coast, Kuwait, Oman, Papua New Guinea, Peru, Trinidad and Tobago, and the United Arab Emirates, bringing Canada's total of CTAs to 84 (which does not include the United States) out of its current tax treaty network of 93 jurisdictions.

The updated list of reservations and notifications includes three optional provisions that were first announced in 28 May 2018: a provision to impose a 365-day holding period for certain shares of Canadian companies held by nonresident companies (for purposes of determining eligibility for lower treaty-based dividend withholding tax rates), a provision to impose a 365-day test period for nonresidents who realize capital gains on the disposition of shares or other interests that derived their value from Canadian immovable property (for purposes of treaty-based capital gains exemptions) and a provision dealing with dual resident entities.

Implications

The MLI measures will, among other things, enhance Canada's ability to challenge perceived treaty abuse and improve the dispute resolution process under tax treaties. Of particular interest, one of the MLI's most notable provisions is the principal purpose test, which in essence excludes an entity from treaty benefits if it is reasonable to conclude that obtaining access to the treaty was one of the principal purposes of the relevant arrangement(s) or transaction(s).

The adoption by Canada of the optional provisions referred to above – in particular, the 365-day tests – may also be very important to nonresidents holding direct or indirect Canadian investments.

On dispute resolution, the MLI will implement mandatory binding arbitration for tax treaties covered by the MLI. This is a significant development that should ensure that Canadian taxpayers receive more complete and timely relief for international tax disputes.

Looking forward

The MLI ratification effectively reflects the Canadian Government's commitment to enhancing the integrity of Canada's tax system. One can expect that the MLI will significantly affect the global business operations of multinational enterprises and other nonresidents with Canadian investments, as well as facilitating the resolution of international tax disputes.

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