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Signature of the Multilateral instrument – reservations made by Luxembourg

Background

On 7 June 2017, the official ceremony for the signing of the multilateral instrument (“**MLI**”) took place bringing to a close a process initiated last year when a consensus was reached on the wording of the MLI on 24 November 2016 ([see also our newsflash dated 2 December 2016, available on our website \[www.arendt.com\]\(http://www.arendt.com\) section Publications/Newsflash](#)).

The MLI has been negotiated by more than 100 jurisdictions and aims at swiftly implementing the tax treaty measures contained in Actions 2, 6, 7, and 14 of the Base Erosion Profit Shifting (“**BEPS**”) Project of the Organisation for Economic Cooperation and Development (“**OECD**”).

The Luxembourg government has now communicated its reservations and notifications on the MLI. We have provided below a high level overview of the main reservations and notifications made by Luxembourg.

On a general note, Luxembourg has adopted a restrictive approach. Key features include the principal purpose test (“**PPT**”) clause and an improved dispute mechanism system.

As stated in article 2 of the MLI, Luxembourg has declared that the related provisions will apply to all its double tax treaties that are in force, currently 81 treaties (“**Covered Agreements**”). The list of these Covered Agreements can be found here: http://www.impotsdirects.public.lu/fr/conventions/conv_vig.html.

Treaty abuse and inception of the PPT

The introduction of the PPT clause was necessary to comply with the minimum standard set in Action 6 of BEPS.

Luxembourg will introduce a PPT clause, as well as an extended wording in the preambles of its Covered Agreements, clarifying that Covered Agreements may not be used to create opportunities for no or reduced taxation through tax evasion.

In a nutshell, the PPT clause aims at denying the benefits of Covered Agreements to taxpayers where there is evidence that a given arrangement or transaction was set up for the principal purpose of obtaining that benefit.

Dispute settlement procedures

The MLI intends to harmonise and render more efficient the mutual agreement and dispute settlement procedures in double tax treaties.

Luxembourg has opted to include the reformed dispute resolution mechanisms (arbitration and MAP) under the MLI to its Covered Agreements.

Timeline

In order for the MLI to enter into force, it is necessary for a minimum of countries to ratify it. In addition, a waiting period has been included for before the end of which the changes cannot affect the provisions of the Covered Agreements. These periods differ depending on whether the provisions of the MLI relate to withholding tax or to other taxes.

At the very earliest, it is expected that the MLI provisions related to withholding tax will enter into force on 1 January 2019. Other provisions of the MLI may come into force earlier, but not earlier than on 1 January 2018.

Although Luxembourg is expected to ratify the MLI swiftly, significant delays can be expected, given the fact that both contracting parties to a Covered Agreement must ratify the MLI for the changes to apply to that Covered Agreement.

Concluding remarks

As expected, Luxembourg has adopted a restrictive approach of the provisions provided for under the MLI and has sought to limit the scope and impacts of this new layer of international legislation to the minimum standards required.

However, the new PPT and the impact on structures and the application of tax treaties need to be carefully monitored in the future for new and existing structures.

Seminar on MLI **on 28 June at Arendt House**

The OECD's Multilateral Instrument: a game changer in international taxation

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