



Tax Insights

Multilateral Instrument: State of play in 2021

Snapshot

The Multilateral Instrument (MLI) entered into force for Australia on 1 January 2019. Since then, a number of Australia's tax treaties have been impacted by the MLI, and more treaties will continue to be impacted as more of Australia's treaty partners action their ratification of the MLI.

This Tax Insights provides the status of implementation of the MLI in Australia, as of February 2021, and in particular, notes recent developments with respect to **Indonesia, the Czech Republic, Korea and Chile**.

MLI impact for Australia's tax treaties

Based on Australia's tax treaty partners' adopted positions, the MLI will (over time) modify 33 of Australia's 45 tax treaties. The way in which the MLI will modify these treaties will depend on the adoption positions taken by each jurisdiction at ratification, acceptance or approval of the MLI.

- Australia has listed 43 of its 45 bilateral tax treaties as Covered Tax Agreements (CTAs), i.e. the tax treaties which Australia wants the MLI to apply to and modify¹. The tax treaties with Germany and Israel are excluded as they are compliant with the OECD's recommended BEPS treaty proposals.
- Seven of Australia's treaty partners have not signed the MLI, such that the respective tax treaties will not be impacted by the MLI. In particular, the United States (US) has not signed the MLI and is not expected to do so and as a result, Australia's tax treaty with the US will not be impacted by the MLI. Australia's other treaty partners that have not signed the MLI to date are Kiribati, the Philippines, Thailand², Sri Lanka, Vietnam and Taiwan.
- Three of Australia's treaty partners have signed the MLI but did not list their tax treaty with Australia as a CTA. In this regard, whilst Australia has tax treaties with Austria, Switzerland and Sweden, all of which have already ratified the MLI, Australia's tax treaties with these countries will not be impacted by the MLI.

Entry into force of the MLI

Australia ratified the MLI on 26 September 2018 and the MLI entered into force for Australia on **1 January 2019**. For the MLI to affect a particular CTA, the MLI must also have entered into force for the treaty partner country. Once a country ratifies the MLI, the MLI enters into force for that country three clear months after such ratification.

Entry into effect of the MLI

Once the MLI has entered into force for both countries, the next step is to ascertain the relevant "entry into effect" dates. The MLI's entry into effect date for each of the affected tax treaties will differ between withholding taxes, other taxes and Mutual Agreement Procedure (MAP) & arbitration.

Relevantly, a key date is to identify the **latest of the dates** on which the MLI enters into force for Australia and the relevant treaty partner jurisdiction, referred to below as the relevant **Joint entry into force date**. For example, if both Australia and its treaty partner ratified the MLI before 30 September 2018, the MLI entered into force on 1 January 2019, being the relevant Joint entry into force date.

¹ Both countries must have nominated a particular double tax treaty as a CTA for the MLI to modify that tax treaty.

² Thailand has expressed its intent to sign the MLI.

The MLI will enter into effect with respect to a particular tax treaty as follows:

- For **withholding taxes**: The MLI shall have effect where the event giving rise to such taxes occurs on or after the relevant Joint entry into force date;
- For all **other taxes**: The MLI will apply to taxable periods beginning on or after 6 months after the relevant Joint entry into force date. For example, if the MLI entered into force for both Australia and its treaty partner on 1 January 2019, the MLI should apply to taxable periods starting on or after 1 July 2019³, and
- For **MAP and mandatory binding arbitration**: The MLI will apply on or after the relevant Joint entry into force date.

Australia's tax treaties impacted by the MLI

The table below summarises the key relevant dates for Australia's tax treaties that are impacted by the MLI.

	Treaty partners	Relevant Joint entry into force date	MLI Entry into effect		
			Withholding events: occurring on or after	Other taxes: taxable periods starting on or after	MAP & Arbitration
1	UK	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
2	Japan	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
3	France	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
4	New Zealand	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
5	Poland	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
6	Slovak Republic	1 Jan 2019	1 Jan 2019	1 Jul 2019	1 Jan 2019
7	Singapore	1 April 2019	1 Jan 2020	1 Oct 2019	1 Apr 2019
8	Malta	1 April 2019	1 Jan 2020	1 Oct 2019	1 Apr 2019
9	Ireland	1 May 2019	1 Jan 2020	1 Nov 2019	1 May 2019
10	Finland	1 June 2019	1 Jan 2020	1 Dec 2019	1 Jun 2019
11	The Netherlands	1 Jul 2019	1 Jan 2020	1 Jan 2020	1 Jul 2019
12	Russia	1 Oct 2019	1 Jan 2021	30 Nov 2020	1 Oct 2019

³ For a taxable period ending 30 June (such as Australia), the MLI should apply to taxes levied by that country for taxable periods commencing on or after 1 July 2019. If a taxable period in a country follows a calendar year, the MLI should apply to taxes levied by that country for taxable periods commencing on or after 1 January 2020.

	Treaty partners	Relevant Joint entry into force date	MLI Entry into effect		
			Withholding events: occurring on or after	Other taxes: taxable periods starting on or after	MAP & Arbitration
13	India	1 Oct 2019	1 Jan 2020	1 Apr 2020	1 Oct 2019
14	Belgium	1 Oct 2019	1 Jan 2020	1 Apr 2020	1 Oct 2019
15	Norway	1 Nov 2019	1 Jan 2020	1 May 2020	1 Nov 2019
16	Canada	1 Dec 2019	1 Jan 2020	1 Jun 2020	1 Dec 2019
17	Denmark	1 Jan 2020	1 Jan 2020	1 Jul 2020	1 Jan 2020
18	Indonesia ⁴	1 Aug 2020	See footnote	See footnote	See footnote
19	Czech Republic	1 Sep 2020	1 Jan 2021	1 Mar 2021	1 Sep 2020
20	Korea	1 Sep 2020	1 Jan 2021	1 Mar 2021	1 Sep 2020
22	Chile	1 Mar 2021	1 Jan 2022	1 Sep 2021	1 Mar 2021

Who comes next?

12 of Australia's other treaty partners are currently undertaking their domestic law requirements to ratify the MLI. Accordingly, it can be expected that a number of these tax treaties will soon be modified by the MLI.

12 treaties awaiting.....			
Argentina	South Africa	Spain	Mexico
Malaysia	Fiji	Italy	Papua New Guinea
Turkey	China	Romania	Hungary

On 4 August 2020, Malaysia completed its domestic ratification process. The MLI entry into force date for Malaysia will be determined once the Malaysian government deposits the instrument of ratification, acceptance or approval with the OECD, which is expected to be in 2021.

⁴ The dates of entry into effect will be determined once Indonesia has notified the OECD of the completion of its internal processes.

Synthesised texts released by the ATO

The process of determining which MLI Articles modify a tax treaty, and how they do so, is complex. Some tax authorities, including the Australian Taxation Office (ATO) have started to publish “synthesised texts”, once the MLI has come into force, reflecting the modifications made by the MLI to a particular tax treaty to simplify the interpretation and application of CTAs. However, the synthesised text itself is not legally binding.

To date, the ATO has published synthesised texts of Australia’s tax treaties with Belgium, Canada, Czech Republic, Finland, France, India, Ireland, Japan, Korea, Malta, the Netherlands, New Zealand, Norway, Poland, Russia, Singapore, the Slovak Republic and the United Kingdom.

These synthesised texts have been prepared jointly by the ATO and its counterparts and represent their shared understanding of the modifications made by the MLI to each of these double tax treaties. It is expected that the ATO will be preparing a synthesised text for the majority of Australia's tax treaties as modified by the MLI.

ATO guidance

On 1 October 2020, the ATO issued a Law Administration Practice Statement (PS LA) 2020/2 on **“Administering general anti-abuse rules, such as a principal or main purposes test, included in any of Australia’s tax treaties”**.

PS LA 2020/2 is primarily an instruction to ATO staff, and provides guidance to ATO staff on the administrative process of applying:

- The Principal Purposes Test (PPT) under Article 7 of the MLI - which Australia has adopted and will effectively be incorporated into Australia’s tax treaties that are covered by the MLI.
- A PPT in an Australian tax treaty that is not impacted by the MLI.
- A main purposes test in an Australian tax treaty that is yet to be or will not be modified by the MLI.

Whilst primarily being administrative guidance, the PS LA nonetheless contains some important markers on the ATO views on interpretative matters, please see this [Tax Insights](#) for a detailed discussion.

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