



Tax&Legal Highlights

Bulgaria

Bulgaria signed the MLI

On 7 June 2017, under the framework of the OECD BEPS project, 68 jurisdictions, including Bulgaria, signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI).

The MLI allows jurisdictions to transpose the results of the OECD BEPS project by way of modifying their existing tax treaties networks. The measures included in the MLI address hybrid mismatches, treaty abuse, avoidance of permanent establishment, mutual agreement procedure and arbitration. While certain provisions of the MLI establish a number of minimum standards that are required to be implemented by jurisdictions signing up to it, the signatories may choose to apply available optional provisions by way of filing technical reservations and notifications.

The OECD, in its role as Depositary, has published on its website provisional lists of the treaties they intend to bring within the scope of the MLI, along with their reservations and notifications ("MLI Positions"), including Bulgaria's MLI Positions (available in English on the OECD website).

Bulgaria defined 66 tax treaties as agreements it wishes to be covered (Covered Tax Agreements) by the MLI, while 38 of these tax treaties are set by the other contracting jurisdiction that also signed the MLI on 7 June. At the time of signature of the MLI, Bulgaria has made reservations to all optional provisions of the MLI. It should be noted that as the OECD stated in the document listing the signatory countries, the MLI positions provided at the time of signature may be subject to change, and the definitive position for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI.

Bulgaria has opted to apply the provisions with connection to the BEPS project minimum standards. The minimum standard changes to treaties address treaty abuse, the mutual agreement procedure and the preambles to tax treaties for preventing treaty abuse, as well as the provisions relating to dispute resolution. The treaty abuse minimum standard addresses concerns that bilateral tax treaties could be used to make treaty benefits available in unintended circumstances. Options are given to support the different approaches permitted under the minimum standard: principal purpose tests (PPT) or simplified limitation on benefits rules (LOB), supplemented with a PPT. Alternatively, the use of detailed LOB rules is permitted. All 68 signing jurisdictions have opted to include the PPT within their Covered Tax Agreements. The following 12 countries, including Bulgaria, have chosen to opt for the supplementary LOB rules: Argentina, Armenia, Bulgaria, Chile, Colombia, India, Indonesia, Mexico, Russia, Senegal, Slovakia and Uruguay.

For the changes to apply to a particular bilateral tax treaty on the provisional list provided by a jurisdiction to the OECD at the time of signing the MLI, both parties to the treaty must ratify the MLI and adopt the same optional provisions. Signatories may amend their MLI Positions until ratification. After ratification, signatories can choose to opt in with respect to optional provisions or to withdraw reservations. As at 21 June, Bulgaria has not officially expressed its intention whether it will amend its MLI Positions until ratification or subsequently.

The domestic ratification procedures will determine when the changes will have an effect for each tax treaty.

Draft law proposed for CbC reporting

A draft law presented to the parliament on 5 June 2017 would implement EU Council Directive 2016/881 on country-by-country (CbC) reporting into Bulgarian law. The draft law generally follows the provisions of the EU directive.

According to the draft law, multinational enterprise groups (MNE groups) headquartered outside Bulgaria would be required to file CbC reports in Bulgaria if their consolidated group revenue exceeds EUR 750 million. A reduced reporting threshold of BGN 100 million (approximately EUR 51 million) is proposed for MNE groups whose ultimate parent entity is a Bulgarian tax resident.

Filing

The CbC report would have to be filed electronically with the tax authorities within 12 months of the last day of the MNE group's fiscal year (FY).

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The term for filing of the first CbC report vary depending on the entity which makes the filing (the ultimate parent entity, surrogate entity or constituent entity).

The first CbC report would have to cover:

- The FY of the MNE group starting on or after 1 January 2016, when the CbC report is filed by the ultimate parent entity or the surrogate parent entity, and
- The reporting FY starting on or after 1 January 2017 when the CbC report is filed by a constituent entity that is not the ultimate parent entity or the surrogate parent entity.

In certain cases, a constituent entity that is not the ultimate parent entity would have to file the CbC report with the Bulgarian tax authorities.

The first notification before the Bulgarian revenue authorities is due by the end of the FY of the MNE group. For the FY of the MNE group starting on or after 1 January 2016, the notification should be filed until 31 December 2017.

Penalties

The draft law provides for significant penalties for noncompliance.

Amendments to the Regulation for the Implementation of the VAT Act came into force on 21 March 2017

The most important changes are regarding rules on the mixed business and private use of goods, adjustments of VAT deduction, calculation of the quotient for proportional VAT credit deductions, and zero-rated supplies related to international transport.

The changes regarding rules on the mixed business and private use of goods are the following:

- The allocation key for the pro-rata VAT deduction can be any reasonable criterion based on time or quantity, or a combination of the two, which takes into account the degree of business use based on the specifics of the good in question;
- Specific instructions how to report invoices for the acquisition of goods for which pro-rata VAT deduction is used;
- Specific provisions requiring the use of pro-rata VAT deduction for goods available at the date of the initial or subsequent VAT registration and in the case of succession due to business reorganization, transfer of a going concern or in-kind contribution.

The changes regarding adjustments of VAT deduction are the following:

- Opportunity to claim a portion of the VAT credit in the case of taxable supplies of fixed assets (goods or services) for which no initial deduction was claimed;
- Specific rules on the protocols, which need to be issued in the different cases of deduction adjustments;
- Members in a consortium should make the deduction adjustment for any goods or services provided to the consortium based on their degree of business use at the level of the latter.

The change regarding calculation of the quotient for proportional VAT deduction (when goods or services are used for both taxable and exempt supplies) is the following:

The following turnover should be excluded when calculating the quotient:

- the sale of fixed assets, used by the taxable person in its independent economic activities;
- the incidental sale of immovable property or incidental provision of financial services.

The change regarding zero-rated supplies related to international transport is the following :

- there are new rules on the documents needed to support the application of 0% VAT for supplies related to ships and aircraft.

There are some other changes :

- VAT-registered entities will no longer be required to file a statement for offsetting (so called Appendix 6) when claiming effective VAT recovery under the general rules. Simply stating the amount for recovery in the VAT return will be enough;
- It is explicitly stated that the supply of pre-paid telephone cards is a service;
- The tour operator margin scheme will not be applicable to goods and services supplied directly by the tour operator (rather than obtained from third parties). The general VAT rules will apply to such goods and services.

Reminder: Possibility for filing a correction annual corporate income tax return

As part of the number of new tax rules applicable in Bulgaria as from 1 January 2017, the tax payers will be able to file a one-off correcting corporate income tax return in case of mistakes identified after 31 March of the following year and the submission of the regular corporate income tax return.

The correcting return may be filed by 30 September of the following year. This will also apply for the corporate income tax return due for 2016. Hence, for a mistake identified and related to 2016, one-off correction corporate income tax return may be filed until 30 September 2017.

The correction procedures existing until 31 December 2016, which include the notification of the National Revenue Agency, will continue to apply in all other cases.

The scope of the events that may trigger a correction is increased. It will now include adjusting events within the meaning of the applicable accounting standards.

Mandatory electronic submission of returns as of 1 January 2018

As of 1 January 2018, tax payers will be obliged to submit all returns under the CITA electronically.

The discount currently granted for electronic submission will be discontinued after 1 January 2018.

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