

Multilateral Instrument (MLI) Ratification

Dear Friends,

On 20 February 2020, the President signed a Law “On ratification of MLI implementing treaty related BEPS measures”. The MLI will enter into force on the first day of the month following a three-month period after the submission by Kazakhstan of ratification instrument to the OECD depository.

Overview

The MLI is an outcome of the OECD Base Erosion and Profit Shifting (BEPS) Project designed to tackle tax avoidance strategies to artificially shift profits to low or no-tax jurisdictions.

The MLI is expected to affect the interpretation and application of more than 1,600 tax treaties without the need for any bilateral negotiations between countries. The MLI enables quick and consistent implementation of the double tax treaty related BEPS Project recommendations.

Below, we provide a brief summary of key modifications that will be introduced to existing Tax Treaty network of Kazakhstan as a result of MLI, subject to matching principle.

MLI Article	Brief description	Final position of Kazakhstan
Prevention of treaty abuse (Article 7)	Article 7 of the MLI provides for application of <i>Simplified Limitation on Benefits (LOB) provision</i> as well as <i>Principal Purpose Test (PPT)</i> . Under the <i>LOB provision</i> , tax treaty benefits will be limited to “qualified” entities meeting specific conditions and will not apply in case an entity does not have sufficient presence in its home country. Under the <i>PPT test</i> , tax treaty benefits will not be granted in case, having regard to all relevant facts and circumstances, it is reasonable to conclude that obtaining tax treaty benefits was one of the principal purposes of the arrangement or transaction.	Kazakhstan opted for a combination of PPT test and LOB provision. Most countries opted for a general anti-abuse rule on the PPT, or for a combination of PPT and LOB clause. At that, LOB provision will apply provided the other Contracting State also opted for application of LOB provision.
Dividend transfer transaction (Article 8)	Article 8 of the MLI allows application of a reduced withholding tax rate on dividend income where ownership conditions described in relevant tax treaty are met throughout 365 day period, including the day of dividend payment.	Kazakhstan opted for application of minimum shareholding period. Article 8 will apply provided the other Contracting State also opted for its application.
Capital gains from alienation of shares (Article 9)	Article 9 of the MLI entitles the state of source to tax capital gains from alienation of shares or interest deriving their value <i>principally</i> from immovable property situated in that state of source, where the value threshold is met at any time during the 365 days preceding alienation.	Kazakhstan opted for application of value threshold at any time during 365 day period. Article 9 will apply provided the other Contracting State also opted for its application.
Permanent establishment (PE) status (Articles 12-14)	Articles 12-14 of the MLI address the issues of artificial avoidance of PE creation through commissionaire arrangements, specific activity exemptions (i.e. auxiliary and preparatory activity), splitting-up of contracts.	Kazakhstan opted to apply provisions aimed to tackle artificial avoidance of PE creation through commissioner arrangement, specific activity exemptions, splitting-up of contracts. Articles 12-14 will apply provided the other Contracting State also opted for their application.

How Deloitte can help?

We will keep you informed on the course of subsequent news / updates accordingly. Should you need any support on the MLI related issues, our team is at your disposal and is always available for a discussion.

Your contacts

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MLI timeline in Kazakhstan

- 24 November 2016**
MLI was adopted
- 25 June 2018**
Kazakhstan signed MLI
- 6 February 2020**
Parliament approved ratification of MLI
- 20 February 2020**
President signed the Law on MLI ratification
- MLI will enter into force** on the first day of the month following a three-month period after the submission by Kazakhstan of ratification instrument to the OECD depository
- 6 months after entry into force**
MLI provisions with respect to taxes other than WHT will have effect
- 2021**
MLI provisions with respect to WHT will have effect



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