

## Luxembourg Tax Alert

### MLI – expected entry into force in Luxembourg

**18 February 2019**

On 7 June 2017, Luxembourg signed the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS \(MLI\)](#), along with representatives of 67 other jurisdictions. So far, [87 jurisdictions have signed the MLI](#), 20 of which have already ratified this Convention.

The draft law transposing MLI into Luxembourg law was deposited in the parliament on 3 July 2018 and was voted on by the deputies on 14 February 2019. The Council of State rendered its exemption of a second vote on 15 February, and therefore, the publication of the final law in Luxembourg official journal will most likely happen in the course of the coming weeks.

Once this has been done, Luxembourg has to provide its ratification notice to the OECD. This step will be the starting point to determine the entry into force of the MLI for Luxembourg. For each covered double tax treaty, it also needs to be analyzed whether and when the other party has ratified the MLI, in order to establish when the provisions become effective for the treaty at hand.

Since the MLI does not replace the existing double tax treaties, but acts as an addition or modification to their content, several elements are required for the MLI changes to apply effectively to a specific bilateral tax treaty. Both states being party to such a treaty must not only ratify the MLI, but also choose that treaty as one of their covered tax treaties and choose to adopt the same provisions (unless an asymmetrical adoption is allowed in specific cases).

#### **Potential date of MLI Application in Luxembourg**

MLI enters into force – distinct from “entry into effect” which means the effective date of application of its provisions – gradually on a jurisdiction by jurisdiction basis. To date, it has already entered into force for a total of 14 jurisdictions (such as, among others, France and the UK). For all other countries, the MLI will enter into force on a country by country basis.

Under the MLI provisions, entry into force of this Convention takes place on the first day of the month following the expiration of a period of three calendar months beginning at the time of the deposit of the ratification instrument (i.e. where the ratification instrument would for example be deposited on 2 March 2019, the MLI would enter into force on 1 July 2019).

With respect to taxes withheld at source, the MLI provisions become applicable where the event giving rise to such taxes occurs on or after the first day of the next calendar year that begins on or after the latest of the dates on which the MLI enters into force for the two parties to the covered tax treaty.

With respect to all other taxes, the MLI provisions become applicable for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months from the latest of the dates on which the MLI enters into force for the two parties to the covered tax treaty.

To illustrate the above provisions, please find below a table analyzing the potential dates of MLI entry into force and the entry into effect of its provisions for Luxembourg.

Deposit of the ratification instrument with the OECD in:	<b>MLI entry into force</b>	Entry into effect for <b>withholding tax (WHT)*, **</b>	Entry into effect for <b>other taxes*, **</b>
	<i>First day of the month following a 3-month period from the deposit</i>	<i>1 January after entry into force</i>	<i>6 months after entry into force</i>
February 2019	<b>1 June 2019</b>	Where the operative event of WHT occurs on or after <b>1 January 2020</b>	Other taxes levied with respect to taxable periods beginning on or after <b>1 December 2019</b>
March 2019	<b>1 July 2019</b>	Where the operative event of WHT occurs on or after <b>1 January 2020</b>	Other taxes levied with respect to taxable periods beginning on or after <b>1 January 2020</b>

(\*) Entry into effect of provisions modifying a double tax treaty is not necessarily symmetrical between the two participating countries

(\*\*) For the MLI changes to apply to a bilateral tax treaty concluded by Luxembourg, it also needs to be analyzed whether and when the other party has already ratified the MLI, in order to establish when it comes into effect and when the provisions become effective for the treaty at hand (see below)

At this stage, it can therefore be expected that for Luxembourg, the MLI would most likely become effective on 1 January 2020 where the taxable period corresponds to the calendar year. However, for the MLI changes to apply to a bilateral tax treaty concluded by Luxembourg, it also needs to be analyzed whether and when the other party has ratified the MLI.

The mutual agreement procedure and arbitration provisions are slightly different and generally become applicable already once the MLI has entered into force for both parties to a tax treaty, and therefore would most likely be applicable for Luxembourg as soon as summer of 2019.

## Example of a potential effective date of application of MLI provisions

As an example, we can choose the existing double tax treaty between the UK and Luxembourg. The UK deposited its ratification instrument in June 2018 and therefore, in the UK, the MLI entered into force on 1 October 2018. Assuming that Luxembourg would already deposit its ratification instrument in February 2019, the MLI would enter into force for Luxembourg double tax treaties on 1 June 2019.

The time limit for entry into force of the MLI for a specific tax treaty runs from the date of when the second of the two parties of the covered tax treaty has deposited its own instrument of ratification with the OECD.

Under our assumption, 1 June 2019 would be the latest date of entry into force for the covered tax treaty between Luxembourg and the UK and as such:

- For taxes withheld at source, the MLI would become effective for both countries where the event giving rise to such taxes occurs on or after 1 January 2020.
- For all other taxes, the situation is more complicated due to the differences in taxable periods between the UK and Luxembourg. On the basis of our assumption, the six month period would expire on 1 December 2019 and therefore, the provisions of the MLI would apply to taxable periods beginning at the earliest on 1 December 2019.
  - In Luxembourg, the taxable year usually corresponds to the calendar year (unless divergent application). Therefore, the MLI provisions would predominantly apply for all other taxes as from the taxable year beginning on 1 January 2020 (or as from December 2019 only if divergent taxable year opening at that time).
  - In the UK, the fiscal year runs from April, and therefore, it can be expected that the MLI provisions would apply for all other taxes as from the taxable periods beginning in April 2020.

For the MLI changes to apply effectively to a bilateral tax treaty concluded by Luxembourg, both parties to the bilateral tax treaty must not only ratify the MLI, but also choose such a treaty as one of their covered tax treaties and adopt the same provisions (unless an asymmetrical adoption is allowed in specific cases).

The final voted Luxembourg law contains exactly the same provisions as chosen by Luxembourg in its provisional position taken at the time of signing the MLI in June 2017.

As a reminder, apart from the minimum standard measures to counter treaty abuse and to improve dispute resolution, Luxembourg decided to also adopt other MLI provisions in connection with transparent entities, the application of methods for eliminating double taxation, the avoidance of permanent establishment status, and the arbitration procedure. For more details regarding the MLI provisions chosen by Luxembourg, please consult [our previous communication](#), covering this topic in more detail.

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