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Namibia signs Multilateral Convention to Implement Tax Treaty Related Measures

Tax Alert 4/2021 - Namibia

On 30 September 2021, Namibia signed the Multilateral Convention to Implement Tax Treaty Related Measures (“MLI”) at the OECD Headquarters in Paris.

Background

Over the past several years the Organisation for Economic Co-operation and Development (“OECD”) and the G20 have been working on a number of actions to address Base Erosion and Profit Shifting (“BEPS”). BEPS refers to tax planning strategies that may be used to exploit gaps and mismatches in the tax rules of different countries to artificially shift profits to low or no tax locations.

The BEPS plans currently include 15 actions that *inter alia* address hybrid mismatches, tax treaty abuse, permanent establishments and dispute resolutions.

Namibia joined the inclusive framework on the BEPS project in August 2019 and undertook to implement mechanisms and tools to strengthen domestic tax laws, to curb tax evasion, tax avoidance, base erosion and profit shifting, and to fight illicit financial flows.

The MLI is one of those tools and enables quick and consistent implementation of the tax treaty recommendations that followed from the BEPS project.

Benefits and functions of the MLI

The MLI is a multilateral treaty that allows a member state (Namibia) to swiftly integrate results from the BEPS project into its existing tax treaties without the need for costly and time-consuming bilateral negotiations. That is, the MLI enables a country to only go through a single ratification procedure in its Parliament to modify all its tax treaties rather than seeking to ratify or amend each bilateral tax treaty separately.

By signing the MLI, Namibia has aligned its tax treaty network with the treaty-related BEPS minimum standards (Action 6 to address treaty-abuse, and the treaty elements of Action 14 to improve dispute resolution mechanisms).

Additionally, Namibia may elect to adopt other treaty-related BEPS measures to strengthen its treaty network, including measures to address the creation of a permanent establishment, and hybrid mismatch arrangements that potentially distorts the tax system.

The MLI only takes effect with respect to a particular tax treaty where both treaty partners have ratified the MLI **and** listed their tax treaty as an arrangement to be covered.

The MLI currently covers 94 tax jurisdictions, including 53 tax jurisdictions that have already deposited their elections for ratification, acceptance or approval.

Elections made by Namibia

Namibia elected to have all its tax treaties (11 of them) covered by the MLI. This will mean that a number of articles in the Namibian tax treaties will potentially change through adoption of the wording of the MLI. The provisions that potentially will change relate to –

- Transparent Entities
- Dual Resident Entities
- Elimination of double tax
- Purpose of the tax treaty
- Prevention of treaty abuse
- Dividend withholding tax
- Capital gains on sale of shares (companies holding immovable property)
- Permanent establishment in respect of commissionaire arrangements
- Permanent establishment exemptions due to specific activities
- Mutual agreement procedures
- Corresponding adjustments
- Arbitration
- Entry into effect

If the other country that is party to a particular tax treaty has not elected to modify the same provisions in the tax treaty as Namibia, the current wording of the tax treaty will prevail.

Next steps for implementation

Namibia needs to ratify the MLI through Parliament and lists its tax treaties, elections and reservations on the OECD MLI site. If the other country of a particular tax treaty elected the same provisions, ratified its MLI and listed its elections already, the new wording will be effective once Namibia has provided its listing. Until the ratification and listing, the current tax treaties remain unchanged.

Expectations are that the ratification will take place before December 2021.

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