

## TAX ALERT

### Vietnam Signs Multilateral Convention February 2022

On 09 February 2021, Vietnam signed and officially became the 99<sup>th</sup> member of the Multilateral Convention (“MLI”) to implement tax treaty-related-measures to prevent Base Erosion and Profit Shifting (“BEPS”)

Briefly, the MLI seeks to facilitate the implementation of tax treaty related measures to counter BEPS.

Signatories to the MLI can efficiently update their Double Tax Agreement (“DTA”) to incorporate the measures, without the need to re-negotiate each DTA.

Vietnam has submitted a list of **agreements with 75 Jurisdictions** (see below) that it wishes to designate as Covered Tax Agreements, that is, to be amended through the MLI.

1	Australia	20	Hong Kong	39	Malta	58	Saudi Arabia
2	Austria	21	Hungary	40	Mongolia	59	Serbia
3	Azerbaijan	22	Iceland	41	Morocco	60	Seychelles
4	Bangladesh	23	India	42	Mozambique	61	Singapore
5	Belarus	24	Indonesia	43	Myanmar	62	Slovakia
6	Belgium	25	Iran	44	Netherlands	63	Spain
7	Brunei Darussalam	26	Ireland	45	New Zealand	64	Sri Lanka
8	Bulgaria	27	Israel	46	Norway	65	Sweden
9	Cambodia	28	Italy	47	Oman	66	Switzerland
10	Canada	29	Japan	48	Pakistan	67	Thailand
11	China	30	Kazakhstan	49	Palestine	68	Tunisia
12	Croatia	31	DPR of Korea	50	Panama	69	Turkey
13	Cuba	32	Republic of Korea	51	Philippines	70	Ukraine
14	Czech Republic	33	Kuwait	52	Poland	71	United Arab Emirates
15	Denmark	34	Laos	53	Portugal	72	United Kingdom
16	Estonia	35	Latvia	54	Qatar	73	Uruguay
17	Finland	36	Luxembourg	55	Romania	74	Uzbekistan
18	France	37	Macau	56	Russia	75	Venezuela
19	Germany	38	Malaysia	57	San Marino		

As part of signing of the MLI on 09 February 2022, the Government of Vietnam released its provisional list of expected Reservations and Notifications pursuant to articles 28(7) and 29(4) of the Convention. The Reservations and Notifications will be confirmed upon deposit of the instrument of ratification pursuant to articles 28(6) and 29(3) of the MLI Convention.



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### Vietnam Signs Multilateral Convention February 2022

#### List of expected reservations:

No.	Article of MLI Convention	Vietnam implementation notes
1	Article 3 (Transparent Entities)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 3 not to apply to its Covered Tax Agreements.</li> </ul>
2	Article 4 (Dual Resident Entities)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 4 not to apply to its Covered Tax Agreements.</li> </ul>
3	Article 5 (Application of Methods for Elimination of Double Taxation)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 5 not to apply to its Covered Tax Agreements.</li> </ul>
4	Article 8 (Dividend Transfer Transactions)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 8 not to apply to its Covered Tax Agreements.</li> </ul>
5	Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for article 9(1)(b) not to apply to its Covered Tax Agreements. In addition, Vietnam reserves the right for article 9(4) not to apply to its Covered Tax Agreements that already contain the provisions described in article 9(5) and list 66 agreements, together with the article and paragraph number, that contain provisions that are within the scope of this reservation.</li> </ul>
6	Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 10 not to apply to its Covered Tax Agreements.</li> </ul>
7	Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 11 not to apply to its Covered Tax Agreements.</li> </ul>
8	Article 14 (Splitting-up of Contracts)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the entirety of article 14 not to apply to its Covered Tax Agreements.</li> </ul>
9	Article 16 (Mutual Agreement Procedure)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for the first sentence of article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package.</li> </ul>
10	Article 17 (Corresponding Adjustments)	<ul style="list-style-type: none"> <li>• Vietnam reserves right for the entirety of article 17 not to apply to its Covered Tax Agreements on the basis that in the absence of a provision referred to in article 17(2) in its Covered Tax Agreement:                             <ul style="list-style-type: none"> <li>○ <i>it shall make the appropriate adjustment referred to in paragraph 1; or</i></li> <li>○ <i>its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure.</i></li> </ul> </li> </ul>
11	Article 35 (Entry into Effect)	<ul style="list-style-type: none"> <li>• Vietnam reserves the right for article 35(4) not to apply with respect to its Covered Tax Agreements.</li> </ul>



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February 2022

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No.	Article of MLI Convention	Vietnam implementation notes
1	Article 2 (Interpretation of Terms)	<ul style="list-style-type: none"> <li>Vietnam lists 75 agreements that it wishes to be covered by the MLI Convention – <i>see the above list</i>.</li> </ul>
2	Article 6 (Purpose of a Covered Tax Agreement)	<ul style="list-style-type: none"> <li>Vietnam chooses to apply article 6(3). Vietnam lists 75 agreements it considers are not within the scope of a reservation under article 6(4) and contain preamble language described in article 6(2). In addition, Vietnam lists 65 agreements it considers do not contain preamble language referring to a desire to develop an economic relationship or to enhance cooperation in tax matters.</li> </ul>
3	Article 7 (Prevention of Treaty Abuse)	<ul style="list-style-type: none"> <li>Vietnam lists 8 agreements, together with the article and paragraph number, it considers are not subject to a reservation described in article 7(15)(b) and contains a provision described in article 7(2).</li> </ul>
4	Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property)	<ul style="list-style-type: none"> <li>Vietnam chooses to apply article 9(4). In addition, Vietnam lists 66 agreements, together with the article and paragraph number, it considers contain a provision described in article 9(1).</li> </ul>
5	Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies)	<ul style="list-style-type: none"> <li>Vietnam lists 75 agreements, together with the article and paragraph number, it considers contain a provision described in article 12(3)(a). Vietnam also lists 75 agreements, together with the article and paragraph number, it considers contain a provision described in article 12(3)(b).</li> </ul>
6	Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions)	<ul style="list-style-type: none"> <li>Vietnam chooses to apply Option A under article 13(1). In addition, Vietnam lists 75 agreements, together with the article and paragraph number, it considers contain a provision described in article 13(5)(a).</li> </ul>



List of expected notifications (cont.):

No.	Article of MLI Convention	Vietnam implementation notes
7	Article 16 (Mutual Agreement Procedure)	<ul style="list-style-type: none"> <li>• Vietnam lists the following:               <ul style="list-style-type: none"> <li>○ 4 agreements, together with the article and paragraph number, it considers contains a provision that provides that a case referred to in the first sentence of article 16(1) must be presented within a specific time period that is shorter than 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement;</li> <li>○ 70 agreements, together with the article and paragraph number, it considers contain a provision that provides that a case referred to in the first sentence of article 16(1) must be presented within a specific time period that is at least 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement;</li> <li>○ 11 agreements it considers do not contain a provision described in article 16(4)(b)(ii);</li> <li>○ 19 agreements it considers do not contain a provision described in article 16(4)(c)(i); and</li> <li>○ 9 agreements it considers do not contain a provision described in article 16(4)(c)(ii);</li> </ul> </li> </ul>
8	Article 18 (Choice to Apply Part VI)	<ul style="list-style-type: none"> <li>• Vietnam chooses not to apply Part VI.</li> </ul>
9	Article 35 (Entry into Effect)	<ul style="list-style-type: none"> <li>• Vietnam chooses to replace the reference to "taxable periods beginning on or after the expiration of a period" with a reference to "taxable periods beginning on or after 01 January of the next year beginning on or after the expiration of a period".</li> </ul>

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#### Closing thoughts:

- The MLI is a major step in the BEPS implementation process. The signing of the MLI signifies Vietnam's commitment to implement BEPS action plans and reflects its serious intent to adopt international standards and combat international tax avoidance.
- With the signing of the MLI, Vietnam has demonstrated its commitment to implement the four minimum standards under the BEPS project in the areas of harmful tax practices, tax treaty abuse, country-by-country reporting requirements for transfer pricing, and improvements in cross-border tax dispute resolution.
- On a separate note, in alignment with signing the MLI, the Prime Minister issued Decision 2072/QD-TTg dated 10 December 2021 approving a project to review the effectiveness of the tax treaties. This impacts Vietnam's tax policy space and adjustment of the tax treaties that would be more aligned with relevant international commitments like the MLI.
- As a next step on the MLI, Vietnam will work towards the ratification of the MLI. It is therefore crucial for multinational corporations to understand the different positions adopted by the treaty countries to determine how the MLI affect a particular tax treaty.





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