



CLOSER STEPS TOWARDS THE OECD BEPS MULTILATERAL INSTRUMENT

According to the latest update (November 3, 2016), ninety-eight countries have committed to formally adopt the OECD's multilateral tax treaty developed under BEPS Action Point 15, "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties" that intends to implement the recommendations from the BEPS project into more than 3,000 bilateral conventions.

The multilateral instrument (MLI) is designed to allow countries to quickly adopt recommendations from the BEPS treaty initiatives, which are aimed at preventing multinationals from eroding the countries' tax bases through tax avoidance and aggressive tax planning.

Subject to the preferences of the OECD members the following items can be covered by the MLI:

- The treaty provisions developed under Action 2 (Neutralizing the Effects of Hybrid Mismatch Arrangements) of the BEPS Action Plan to address fiscally transparent entities, and the measures to address issues with the application of the exemption method to relieve double taxation.
- The provisions developed under Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), including the minimum standard on treaty abuse (e.g., treaty shopping), the introduction of a "saving clause" to make explicit that treaties do not restrict a State's right to tax its own residents and the introduction of anti-abuse provisions (principal purpose test and limitation of benefits clauses).

- The provisions developed under Action 7 (Preventing the Artificial Avoidance of PE Status), including (1) measures to address commissionaire arrangements and other dependent agent permanent establishment (PE) transactions, and (2) the anti-fragmentation rule, where activities previously considered to be preparatory or auxiliary may now be grouped together and be considered core business activities.
- Measures included in the minimum standards and best practices produced under Action 14 (Making Dispute Resolution Mechanisms More Effective) on mutual agreement procedure (MAP), including arbitration.

After signing the MLI, each country will have the option of selecting individual provisions of the treaty that will be exchanged. It is expected that the multilateral instrument will be open for signature in the first half of 2017. As a further step, these countries must ratify the signed treaty.

With respect to the preferences of the Netherlands, the State Secretary informed the Dutch parliament through a letter dated October 28, 2016 that there is support for the principle purpose test in relation to BEPS Action Point 2, BEPS Action Point 6, BEPS Action Point 7 in general but in particular in relation to developing countries and BEPS Action Point 14.



Practitioners have already expressed concerns with regard to the adoption of Action 2 and Action 7, as the recommended measures are complex and gave rise to debate since the OECD has released the BEPS Action Plan. In contrast, the minimum standards in Action Point 14 do not involve significant treaty changes and as a result are prone to a wide adoption.

In this respect, more tax certainty has been brought by the OECD recently, as on October 20, 2016 it has released key documents that will form the basis of the MAP peer review and monitoring process under BEPS Action Point 14. Through rigorous peer reviews and continual collection of data, the Action Point 14 deliverables seek to eliminate taxation not in accordance with treaty provisions and help resolve any tax-treaty related disputes in a timely and efficient manner.

For further information, please contact your trusted RSM advisor.