



NewsFlash

Tax and Legal

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Dear readers,

Kazakhstan has taken another step towards application of the MLI (*Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*) provisions to existing tax treaties concluded by Kazakhstan through a submission to the OECD Depository of the instrument of ratification on 24 June 2020. This document confirms the ratification of the MLI as an international treaty in Kazakhstan.

The MLI is expected to be effective **from 1 January 2021** with respect to taxes on income withheld at the source of payment (in Kazakhstan – withholding tax).

With the MLI introduction tax treaty benefits should be applicable if certain conditions are met. The purpose of the MLI is to prevent tax treaty abuse.

The main restrictive measure adopted by all MLI signatory countries is the so-called Principle Purpose Test. According to this rule, if obtaining a tax treaty benefit was one of the principal purposes of an arrangement or a transaction, the application of such benefits will be denied. Thus, foreign companies will have to prove to the Kazakh tax authorities that one of the principal purposes of an arrangement or a transaction is not merely the application of tax treaty benefits, but other business reasons. This may be problematic for classic holding companies or, for example, financial structures because in the past such structures were focused on obtaining tax benefits, and foreign companies did have a limited level of presence and activities in a particular country.

Also, in accordance with the MLI position of Kazakhstan, the Principle Purpose Test is supplemented with the Simplified Limitation on Benefits rule (SLOB). This rule will further restrict the application of the tax treaty to the number of persons. For instance, individuals, state institutions, public companies, non-profit organizations, and companies carrying out active business activity (i.e. not holding or financial companies) will be considered as so-called "qualified persons" who are entitled to apply tax treaty benefits.

Accordingly, because of the SLOB rule it should be impossible for intermediate holding/financial companies to apply a tax treaty, because such companies should not be recognized as qualified persons. However, in contrast to the Principle Purpose Test, the SLOB rule only applies under the condition that both parties to a specific tax treaty have decided to apply this rule. For example, Kazakhstan and Russia have made such a decision.

The entry into force of the MLI will lead to significant changes in the application of tax treaties which will affect the tax efficiency of existing and contemplated structures. Multinational companies are already conducting diagnostics of the applicable tax treaties in terms of the impact of the MLI on them, so they have time to implement the necessary measures to adapt to the introduced changes.

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