Tax Alert
October 2019

Multilateral Instrument ratified

Our [Tax Alert dated July 2017] provided details on the Multilateral Instrument (MLI) signed by Mauritius. The MLI is designed to implement tax treaty related measures to prevent Base Erosion and Profit Shifting (BEPS). The purpose of this alert is to provide an update on the position of Mauritius with respect to the MLI.

Overview of the MLI

The MLI is an agreement negotiated under Action 15 of the OECD/G20 BEPS Project which allows the amendment of Double Taxation Avoidance Agreements (**DTAAs**) without the necessity to conduct additional negotiations between two countries.

The measures under the MLI include, inter-alia, anti-treaty abuse rules such as the Principal Purpose Test (**PPT**) and limitation of benefit clause, alongside a new preamble reinforcing anti-treaty abuse rules, permanent establishment rules, arbitration rules, modernization of Mutual Agreement Procedures and transfer pricing articles in tax treaties.

Effective dates

Mauritius deposited its instrument of ratification with the OECD on 18 October 2019 and the MLI will enter into force on 01 February 2020.

The amendments generally take effect from the basis period following the expiration of a period of six calendar months after the MLI enters into force for both jurisdictions.

Impact of the MLI

The MLI becomes operative when two countries elect to treat a DTAA as a Covered Tax Agreement (**CTA**).

Out of its 46 DTAAs, Mauritius has nominated 44 CTAs, which excludes the India and Australia DTAAs. From the 44 CTAs;

- 2 will not be changed as the countries have not chosen Mauritius as a CTA (Jersey and Tunisia)
- 18 are subject to the respective country signing the MLI (Botswana, Cabo Verde, Congo, Ghana, Lesotho, Madagascar, Mozambique, Namibia, Nepal, Oman, Bangladesh, Rwanda, Sri Lanka, Eswatini (previously called Swaziland), Thailand, Uganda, Zambia and Zimbabwe
- 24 are to be changed with the ratification of the MLI and they are:

Barbados	**Italy**	**Qatar**
Belgium	**Kuwait**	**Senegal****
Croatia	**Luxembourg**	**Seychelles**
Cyprus	**Malaysia**	**Singapore**
Egypt	**Malta**	**South Africa**
France	**Monaco**	**Sweden**
Germany	**Pakistan**	**UAE**
Guernsey	**China**	**UK**

**Will terminate in 2019 / 2020.

Key Provisions adopted by Mauritius under the MLI

A CTA between Mauritius and its DTAA partner will only be amended by the MLI if both the treaty partners share the same position on the provisions of the MLI, and after both parties have deposited their instrument of ratification with the Secretary-General of the OECD. The MLI provides signatories with significant flexibility to decide which portions of MLI to adopt, modify or reject. Mauritius has adopted the following key provisions in the MLI, amongst others:

— Article 6 - Modifies the preamble of tax treaties;

— Article 7 - Reflects the minimum standards for prevention of treaty abuse under BEPS Action 6;

— Article 16 - Introduces minimum standards for improvement of dispute resolution under BEPS Action 14; and

— Article 17 – Introduces corresponding adjustment mechanism with respect to Article 16.

KPMG observations

Mauritius has maintained a strategic position as a holding jurisdiction for investing into Africa and Asia. This is due to numerous reasons, including its business-friendly environment, wide DTAA network and stable political conditions.

Ratification of the MLI will imply that a number of Mauritius's DTAAs will be amended at one go. The most impactful measure under the MLI on Mauritius is likely to be the PPT.

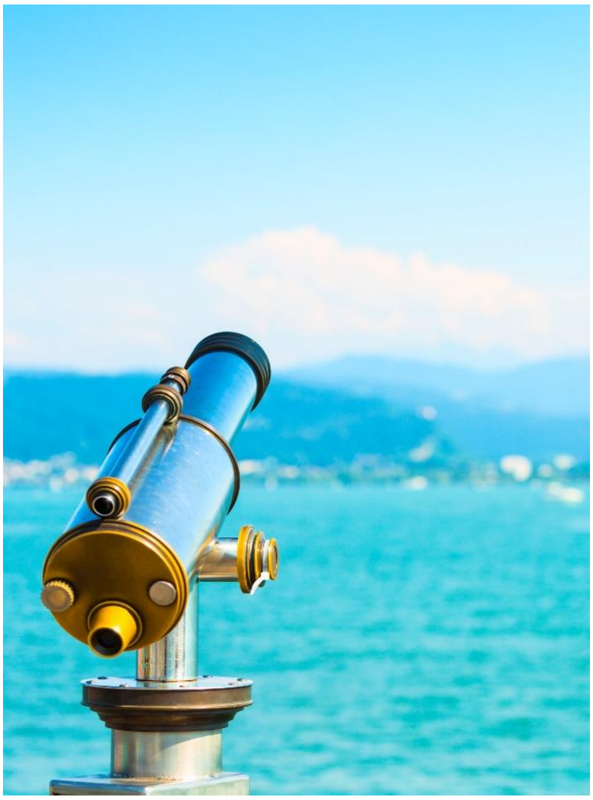
With the PPT test included in DTAAs, this means that where it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining treaty benefit was one of the principal purposes of any arrangement or transaction, treaty benefits could be denied.

This in turn should send a signal to multinationals to ensure they proactively reassess the level of substance of their cross-border structures to mitigate the potential adverse impact of the PPT.

How we can help

— Discuss the impact of MLI on your cross border transactions where they rely on the provisions of an existing DTAA to avoid double taxation

— Ensure your international operations are not adversely impacted by the new changes



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