



Tax insight

OECD Multilateral Instrument: Kazakhstan case

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# Kazakhstan impacted by the MLI

As at 24 June 2020, Kazakhstan committed to participate in the Multilateral Instrument (MLI) ratifying and depositing its instrument of ratification with the OECD. Out of the 94 jurisdictions, the MLI provisions have already started to affect a number of Kazakhstan's double tax treaties with effect from 1 October 2020.

## What MLI can do?

The MLI is one of the 15 Actions from the OECD BEPS action plan to modify existing tax treaties with a view to implementing the BEPS Action 6 minimum standard globally in a consistent manner and within a reasonable timeframe. It enables quick and consistent implementation of the tax treaty recommendations that follow from the BEPS project, namely tax treaty abuse (Action 6), permanent establishments (Action 7) and dispute resolution (Action 14).

The MLI will not replace existing bilateral tax treaties or change underlying treaty text, nor will it function in the same way as an amending protocol to a treaty. The MLI will apply alongside a tax treaty and modify its application by allowing participating jurisdictions to adopt the BEPS recommendations without having to renegotiate each relevant treaty.

- The application of MLI articles to a specific Covered Tax Agreement should be considered on a case-by-case basis
- The exact entry into effect will depend on the taxable period in each jurisdiction. The tax year follows the calendar year for most countries but there are exceptions



## MLI impact for Kazakhstan's tax treaties

Based on Kazakhstan's tax treaty partners' known positions (provisional and final), the MLI will modify 32 of Kazakhstan's 54 tax treaties. The way in which the MLI will modify these treaties will depend on the final positions taken by Kazakhstan and the respective treaty partner upon ratification.

Kazakhstan has listed **54 bilateral tax treaties as Covered Tax Agreements (CTAs)**.

**Eight of Kazakhstan's treaty partners** have signed the MLI but did not list the tax treaty with Kazakhstan as a CTA (Austria, Croatia, Czech Republic, Georgia, Germany, Norway, Qatar, and Switzerland). For example, whilst Kazakhstan has a tax treaty with Austria, which has already ratified the MLI, Kazakhstan's tax treaty with this country will not be impacted by the MLI.

**Eleven of Kazakhstan's treaty partners** have not signed the MLI, such that the respective tax treaties will not be impacted by the MLI (Azerbaijan, Belarus, Iran, Kyrgyzstan, Mongolia, Moldova, Tajikistan, Turkmenistan, Uzbekistan, USA, and Vietnam). In particular, the United States has not signed the MLI and is not expected to do so and as a result, Kazakhstan's tax treaty with the US will not be impacted by the MLI.

# Kazakhstan tax treaties post MLI: what is next?

Once MLI becomes operational, one will have to ensure that the treaty provisions are not read on a stand-alone basis but with the corresponding provisions of MLI along with related country reservations

## Entry into force of the MLI

Kazakhstan ratified the MLI on 24 June 2020 and the MLI entered into force for Kazakhstan **on 1 October 2020**. For the MLI to affect a particular CTA, the MLI must also have entered into force for the treaty partner country. Once a country ratifies the MLI, the MLI enters into force for that country three clear months after such ratification.

## Entry into effect of the MLI

Once the MLI has entered into force for both countries, the next step is to ascertain the relevant “entry into effect” dates. The MLI’s entry into effect date for each of the affected tax treaties will differ between withholding taxes, other taxes and mutual agreement procedure (MAP) & Arbitration.

Relevantly, a key date is to identify the latest of the dates on which the MLI enters into force for Kazakhstan and the relevant treaty partner jurisdiction, referred to below as the relevant Joint entry into force date. For example, if both Kazakhstan and its treaty partner ratified the MLI before 24 June 2020, the MLI entered into force on 1 October 2020, being the relevant Joint entry into force date.

### The MLI will enter into effect with respect to a particular tax treaty as follows:

**With respect to withholding taxes:** The MLI shall have effect where the event giving rise to such taxes occurs on or after the relevant Joint entry into force date. MLI provisions take effect from the first day of the next calendar year. **As at 1 January 2021 effective in Kazakhstan.**

**With respect to other taxes:** The MLI will apply to taxable periods beginning on or after six months after the relevant Joint entry into force date. For example, if the MLI entered into force for both Kazakhstan and its treaty partner on 1 October 2020, the MLI provisions with respect to other taxes will have effect **on or after 1 April 2021.**

**With respect to MAP and mandatory binding arbitration:** The MLI will apply **on or after the relevant Joint entry into force date.**

# Kazakhstan's first treaties to be impacted by the MLI

The table below summarizes key relevant dates for Kazakhstan's first tax treaties impacted by the MLI.

№	Country	Relevant Joint entry into force	MLI entry into effect		
			Withholding tax	Other taxes	MAP & Arbitration
1	Belgium	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
2	Canada	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
3	Finland	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
4	France	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
5	India	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
6	Ireland	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
7	Japan	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
8	Korea	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
9	Latvia	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
10	Lithuania	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
11	Luxembourg	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
12	Netherlands	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
13	Poland	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
14	Russia	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
15	Saudi Arabia	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
16	Serbia	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
17	Singapore	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
18	Slovak Republic	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021

19	Slovenia	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
20	Sweden	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
21	Ukraine	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
22	United Arab Emirates	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021
23	United Kingdom	1 Oct 2020	1 Jan 2021	1 April 2021	1 Jan 2021

## Who comes next?

Twelve of Kazakhstan's other treaty partners are currently undertaking their domestic law requirements in order to ratify the MLI. Accordingly, it can be expected that a number of these tax treaties will soon be modified by the MLI.

### 12 tax treaties awaiting...

Armenia	Hungary	Pakistan
Bulgaria	Italy	Romania
China	Malaysia	Spain
Estonia	North Macedonia	Turkey

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