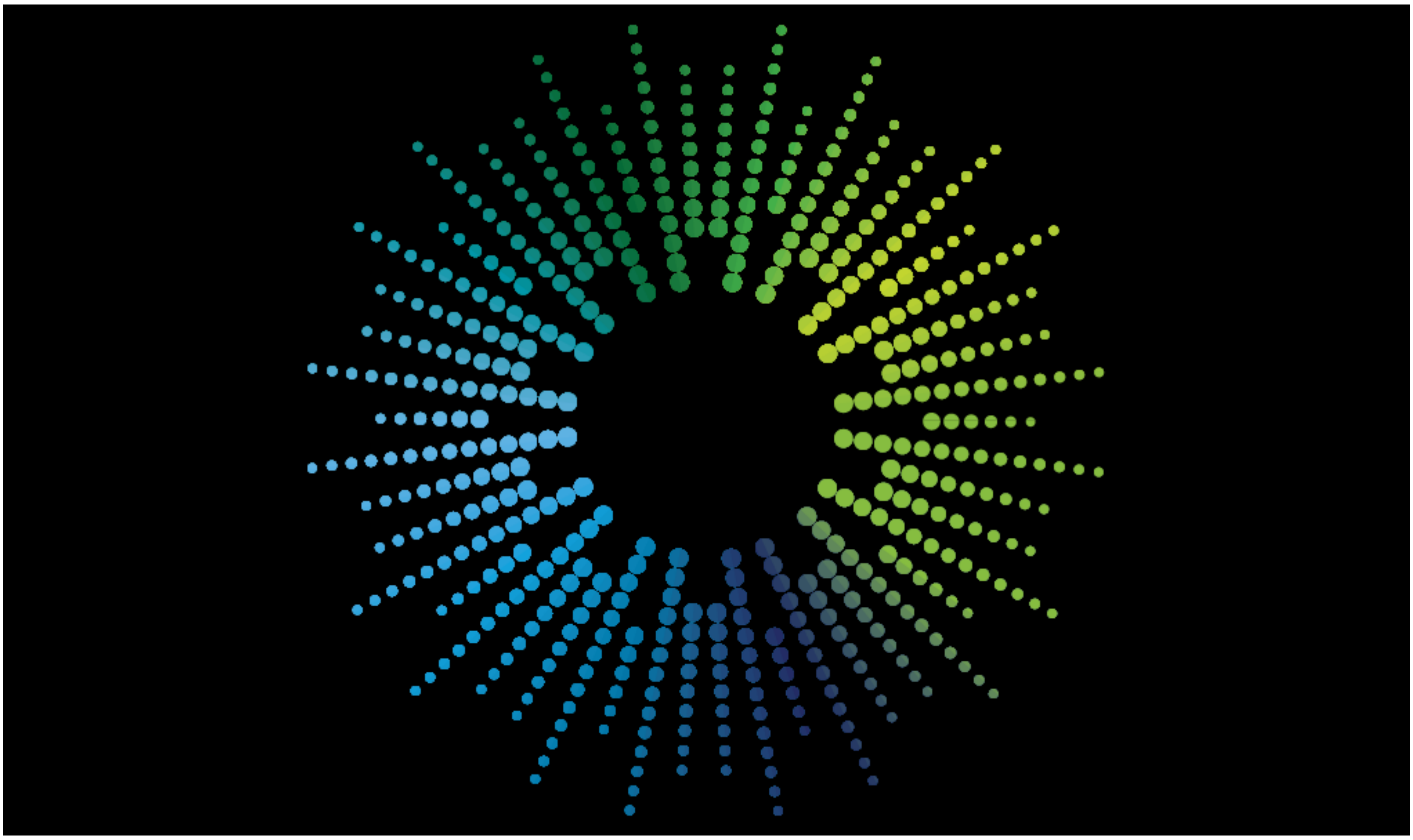

Special international tax alert issue

Double tax treaties are going to change

Kazakhstan is integrating anti-BEPS measures into the existing double tax treaties

As reported by OECD on 24 January 2018, **Kazakhstan** along with representatives of Algeria, Oman and Swaziland and a number of other jurisdictions have formally expressed their intention to join the Multilateral Convention ("MLI") to implement tax treaty related measures to prevent base erosion and profit shifting ("BEPS").

The draft of the MLI is currently reviewed in the Ministry of Justice and it is expected that by June of this year such will be signed accordingly.

On 22 May 2018, the Association of the taxpayers of Kazakhstan distributed for the expert review the draft of the MLI translated into Russian and Kazakh language. However, the provisional list of reservations and notifications (the "MLI position") of Kazakhstan remains confidential.

It is also interesting to note that the number of countries that have joined the Multilateral Convention is growing rapidly. Thus, on 24 January 2018, ministers and high-level officials form Barbados, Côte d'Ivoire, Jamaica, Malaysia, Panama and Tunisia have signed the BEPS Multilateral Convention bringing the total number of signatories to 78.

The purpose of the MLI

The MLI is an instrument designed by OECD in a way to solve the major issue of implementing anti-BEPS provisions into action by virtue of amending the existing network of bilateral double tax treaties. So that those double tax treaties covered by the MLI will operate as amended by the MLI provisions accordingly.

The MLI addresses treaty abuse, artificial avoidance of PE, hybrid mismatch issues, and on the other hand sets higher standards for the tax authorities in terms of disputes resolution and in some cases arbitration to end disputes. Among those listed issues, the treaty abuse and dispute resolution refers to minimum standard provisions that usually cannot be opted out (only in limited circumstances).

The treaty abuse is addressed through a principles purpose test (PPT), which says that no tax treaty benefit would apply if obtaining such were one of the principal purposes of the arrangement / transaction in question. Below we provide a list of questions that may help you to understand and assess the potential impact of the PPT related provisions of the MLI on a particular transaction/arrangement.

The PE issues addressed by the MLI mainly refer to commissionaire arrangements (dependent agent PE), split off the contracts and PE definition exceptions.

Q 1
- What is the objective treaty benefit versus a realistic counterfactual scenario?

Q 2
- What is the business (i.e. non-tax) reason for the arrangements and the choice of location of the entity?

Q 3
- Is there sufficient evidence to assess the weight of the business versus tax-related purposes?

Q 4
- Even if obtaining a treaty benefit is a principal purpose for the arrangement or transaction, does the treaty benefit (in the relevant circumstances) granted in accordance with the object and purpose of the provision of the treaty?

The impact of the MLI

The impact of the MLI on the existing double tax treaties with Kazakhstan will have to be determined on treaty-by-treaty basis; since every country can make different choices and reservations, (i.e. the MLI position of each participating country may be different).

For the MLI to apply to a particular bilateral double tax treaty:

- should be duly ratified by / be in effect for both contracting parties to the double tax treaty and
- both contracting parties shall have to include this specific double tax treaty in the list of covered tax agreements for the MLI purposes and
- there shall be a match in the selected terms of agreements.

Therefore, it is important to pay attention at the corresponding bilateral double tax treaties in place between Kazakhstan and the jurisdictions that either have the MLI in force or those about to ratify MLI correspondingly, from the perspective of implemented changes (especially those referring to BEPS minimum standards, e.g. PPT). So far, the MLI has been already ratified by Austria, the Isle of Man, Jersey, Poland, and Slovenia.

Particularly, in the context of the PPT, the following transactions / arrangements shall be thoroughly reviewed: certain licensing and finance arrangements, changes in holding company structures and / or shareholding, etc.

The MLI will enter into force on the first day following a three-month period after the submission by Kazakhstan of ratification instrument to the OECD depositary.

How Deloitte can help

Should you need any support on the MLI related issues, our team is at your disposal and is always available for a discussion. You can find the contact details of our main team members below. In particular, we may help you by virtue of (but not limited to):

- Providing seminars with the detailed insights and practical examples on the application of anti-BEPS measures / provisions implemented by the MLI;
- Performing analysis of your existing and / or contemplated cross-border arrangements and assessing corresponding potential impact of the MLI provisions;
- Structuring (restructuring) of cross-border arrangements in a way to be compliant with the MLI provisions;
- Developing tax controls and procedures within the company aimed to ensure compliance with the MLI provisions and mitigate / prevent related tax and legal risks.

Related OECD materials

For the MLI itself, the explanatory statement to the MLI and related useful information please refer to http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm

The toolkit for application of the MLI you can find here: http://www.oecd.org/tax/treaties/application-toolkit-multilateral-instrument-for-beps-tax-treaty-measures.htm

We will keep you informed on the course of subsequent news / updates accordingly.

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