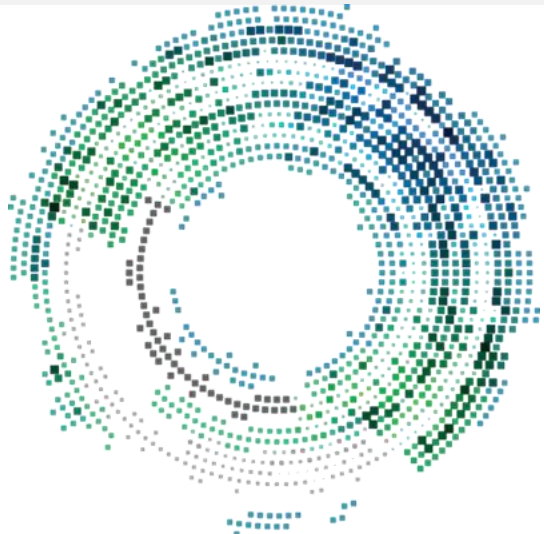
Malaysia | Tax | 19 February 2021



Tax Espresso – Special Alert

Malaysia deposits ratification instrument for MLI

Greetings from Deloitte Malaysia Tax Services

Malaysia deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") on **18 February 2021**. The number of countries that have deposited their ratification instruments for the MLI is 63.

What does this mean to the taxpayers?

The MLI will enter into force for Malaysia on **1 June 2021**. However, the date on which the provisions of the MLI (such as the application of the principal purpose test ("PPT") to prevent treaty abuse) will enter into effect for Malaysia's covered tax agreements ("CTAs") listed in the country's list of reservations and notifications to the MLI will depend on when Malaysia's treaty partners ratify the MLI.

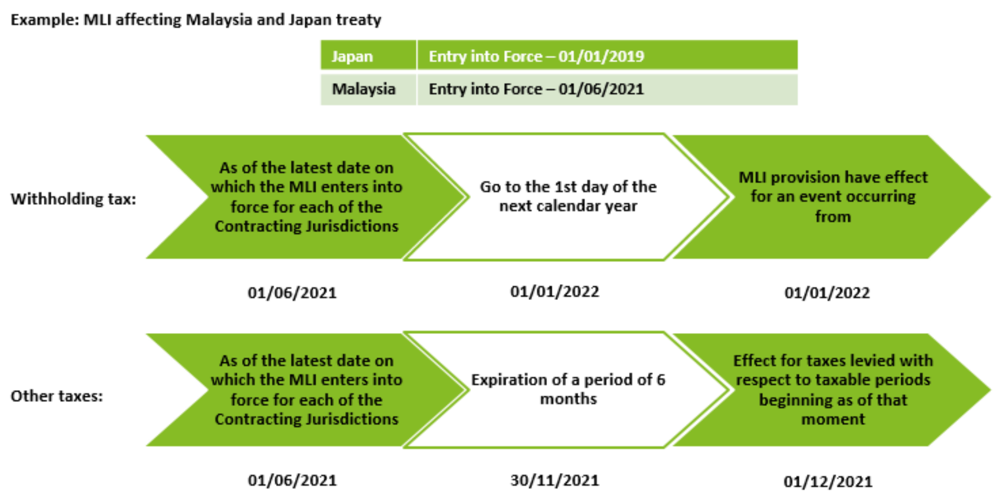
A recap on the relevant timeline

Once the MLI enters into force, different rules apply as follows:

- For **withholding tax ("WHT"),** the MLI provisions will become applicable on or after the first day of the next calendar year that begins on or after the latest of the dates on which MLI enters into force for each of the party to the CTA.

- With respect to **all other taxes**, the MLI provisions will become applicable for taxes levied with respect to taxable period beginning on or after the expiry of six calendar months from the latest of the dates on which MLI enters into force for the treaty partners.

See example below.



There are no material changes to the Malaysia's Final MLI Positions compared to the Provisional MLI Positions. Details of the Provisional MLI and the implication on Malaysian tax treaties have been covered in our Tax Espresso – Special Alert on "Malaysia signs Multilateral Convention" and Tax Espresso – Special Alert on "OECD Multilateral Convention on Base Erosion and Profit Shifting and Pillar Two – Are You Prepared?" Please refer to those alerts for more information.

Next steps

Malaysian and foreign-based multinational corporations should start

- Analysing the MLI position adopted by Malaysia and its treaty partners
- Understanding transaction / business operation model and analysing the impact on the business
- Reviewing of current organisational structure and transactions to analyse the impact of PPT

Whilst the above deals with tax treaties that would be modified by the MLI, it is important to note that tax treaties can always be modified through bilateral negotiations. Notably, the recent Double Taxation Agreement between Malaysia and Cambodia ("Malaysia-Cambodia DTA") that entered into force on 28 December 2020 contains the PPT provision (i.e. one of the BEPS/ MLI features) even though Cambodia is not part of the BEPS inclusive framework and Malaysia-Cambodia DTA is not part of the CTAs listed in Malaysia's MLI. Hence, even if a tax treaty is not modified by the MLI (due to reasons such as the treaty partners adopting different positions in the MLI, the DTA is not included as CTA of the treaty partner etc), BEPS proposals need to be considered as it is possible for the relevant treaty partner and Malaysia to negotiate and amend the DTA in time to come on a bilateral basis.

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