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Singapore ratifies the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

Singapore has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 21 December 2018. This brings the total number of countries that have ratified the MLI to 18 as of 11 January 2019¹.

The MLI will enter into force for Singapore on 1 April 2019. However, the date on which the provisions of the MLI (such as the application of the Principal Purpose Test) will enter into effect for Singapore's covered tax agreements (CTAs) listed under the MLI will depend on when Singapore's treaty partners ratify the MLI.

At the earliest, the MLI will enter into effect on 1 January 2020 for Singapore's CTAs, with respect to taxes withheld at source on amounts paid or credited to non-residents.

The following key revisions² were made to Singapore's list of reservations and notifications that was deposited along with the ratification instrument:

1. Number of listed agreements

Singapore noted that it will apply the MLI to an additional 18 tax treaties, bringing the total number of listed agreements to 86.

The additional tax treaties added to the 21 December 2018 list are:

Number	Countries
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1	Albania
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2	Bahrain
3	Belarus
4	Brunei
5	Cambodia
6	Ecuador
7	Ethiopia
8	Ghana
9	Kenya
10	Laos
11	Libya
12	Myanmar
13	Nigeria
14	Oman
15	Panama
16	Rwanda
17	Tunisia
18	Uzbekistan

Singapore has concluded 90 comprehensive tax treaties, of which 85 of those tax treaties are in-force as of 21 December 2018³. Only 4 of Singapore's 90 comprehensive tax treaties, namely tax treaties with Brazil, Gabon, South Korea and Taiwan, are currently not listed in the MLI.

2. Reservations to Article 18 (Arbitration)

Under Article 28 of the MLI concerning reservations, Singapore has:

- Deleted a notification of observation to the reservation made by the other contracting jurisdiction; and
- Added a reservation, which states that where a reservation made by the other contracting jurisdiction to a CTA refers exclusively to its domestic law (including legislative provisions, case law, judicial doctrines, and penalties), Singapore reserves the right to exclude from the scope of Part VI (Arbitration) those cases that would be excluded from the scope of Part VI (Arbitration) if the other contracting jurisdiction's reservation were formulated with reference to any comparable provisions of Singapore's domestic law or any subsequent provisions that replace, amend, or update those provisions.

¹ [Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, status as of 11 January 2019.](#)

² Vis-à-vis the previous list of reservations and notifications that was submitted earlier on 7 June 2017 when Singapore signed the MLI.

³ Treaties signed but not ratified as at 21 December 2018 are with Brazil, Gabon, Ghana, Kenya and Tunisia.

Deloitte Singapore's views

The status of the 4 jurisdictions that have not been included as listed agreements in Singapore's list of reservations and notifications are as follows:

Countries	Signatory to the MLI	Incorporation of base erosion and profit shifting (BEPS) related measures into bilateral tax treaty
Brazil	X	✓ ⁴
Gabon	✓	✓ ⁴
South Korea	✓	X
Taiwan	X ⁵	X

⁴ Signed but not ratified as at 21 December 2018

⁵ Not a member of the BEPS Inclusive Framework as at 21 December 2018

The exclusion of the Singapore-South Korea treaty could be an indication that negotiations are currently underway to, amongst others, revise this treaty to comply with the minimum standards prescribed under BEPS.

A key implication arising from Singapore's ratification of the MLI is that, amongst others, the Principal Purpose Test (PPT) has to be satisfied in order for treaty benefits to be granted with respect to taxes withheld at source. For Singapore's treaties, the PPT would be effective for amounts paid or credited to non-residents on or after 1 January 2020, insofar as Singapore's treaty partners ratify the MLI by September 2019. Based on the list of countries that have ratified the MLI as at 11 January 2019, 14 of Singapore's tax treaties would be modified by the MLI with effect on 1 January 2020 with respect to taxes withheld at source on amounts paid or credited to non-residents. The 14 countries are: Australia, Austria, France, the Isle of Man, Israel, Japan, Jersey, Lithuania, Malta, New Zealand, Poland, Slovak Republic, Slovenia and the United Kingdom.

In relation to Singapore's interpretation of the PPT, the Inland Revenue Authority of Singapore has indicated that it must be reasonable to conclude that one of the main purpose was to obtain the benefits of the Double Taxation Agreements (DTA) in an improper and abusive manner before the PPT is invoked

to deny the DTA benefits. This is a question of fact and has to be determined by carrying out an objective analysis of the aims and objects of all persons involved in the arrangement or transaction and taking into account all facts and circumstances surrounding the arrangement or transaction. Where the arrangement is connected with a core commercial activity and its form is not contrived, it would not be reasonable to conclude that one of the principal purposes of the arrangement was to obtain a DTA benefit.

Businesses, especially those with cross-border transactions and are applying reduced withholding tax rates under the relevant Singapore's treaties to such payments, should begin to evaluate the impact of the application of PPT in Singapore's treaties, starting with the 14 tax treaties mentioned above where the MLI impact will kick in on 1 January 2020.

If there are any specific doubts on the application of the MLI, we will be happy to discuss them with you.

Contacts

For more information on the above or any other matters, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).

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