

## IFA 2020 Cancun Congress

### Subject 1: Reconstructing the treaty network

#### Outline

##### Introduction

The Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting has been described as “an historical turning point in the area of international taxation” which introduces a third layer of tax rules for the taxation of cross-border transactions in addition to domestic tax law and bilateral tax treaties.<sup>1</sup> Containing numerous provisions implementing tax treaty measures proposed by the Organization for Economic Cooperation and Development (OECD) as part of its project on base erosion and profit shifting (BEPS), this Multilateral Instrument (MLI) is designed to modify specific provisions of Covered Tax Agreements (CTAs) that are designated by Contracting Jurisdictions to the Convention.

Signed by 68 jurisdictions on 7 June 2017 and by another 10 jurisdictions since then, the MLI entered into force on 1 July 2018 for the first five signatories to deposit their instrument of ratification, acceptance or approval with the OECD, and enters into force for each other signatory on the first day of the month after the expiration of three months from the date when it deposits its instrument of ratification, acceptance or approval with the OECD. Although the MLI will only modify CTAs selected by Contracting Jurisdictions and not modify CTAs until a period of time after both Contracting States deposit their instruments of ratification, acceptance or approval with the OECD, the MLI will begin to modify CTAs beginning in 2019.

Subject 1 of the IFA 2020 Congress in Cancun will conduct a comprehensive review of the impact and implementation of the Multilateral Agreement (MLI) following its ratification and coming into force, addressing the impact of the MLI on the tax treaty network and practices regarding the implementation of MLI provisions and corresponding provisions of bilateral tax treaties.

National reports will be split into two parts: Part I will analyse how the existing treaty network has actually been impacted by the MLI; part II will focus on the actual implementation of the MLI across the world.

Part I will address the following questions:

- which jurisdictions have signed the MLI, which have not, and what are the reasons for signing or not?
- for those jurisdictions that have signed the MLI, which treaties have been listed as CTAs, which have not, and why?; is it expected that other treaties be listed over time?
- for jurisdictions that have signed the MLI, which options have been selected, which provisions have been subject to reservations, and why?; is it expected that some reservations will be withdrawn over time?
- for jurisdictions that have signed the MLI, which CTAs will be modified by which provisions of the MLI?

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<sup>1</sup> Robert J. Danon and Hughes Salomé, “The BEPS Multilateral Instrument” (2017) *IFF Forum für Steuerrecht* 197-247 at 199.

- for jurisdictions that have signed the MLI, when will CTAs will become subject to its provisions?
- for jurisdictions that have and have not signed the MLI, what if any impact are the provisions of the MLI and treaty-related BEPS proposal expected to have on bilateral tax treaty negotiations? is it expected that provisions of the MLI will be incorporated into bilateral tax treaties or that the MLI will remain as a third layer of international tax law?
- what, if any, assessment have states made regarding the impact of MLI provisions on tax administration and economic activity?

Part II will address the following issues:

- for jurisdictions that have signed the MLI, how will modifications to CTAs be communicated? will jurisdictions produce consolidated versions of treaties? if they do not or will not, what is the legal status of the content published by the OECD (matching database, etc.) on the MLI in the domestic law of signatories?
- regarding the PPT:
  - what if any procedures will tax administrations adopt when assessing taxpayers under this provision? e.g., will a special PPT committee review potential assessments on this basis?
  - how will tax professionals take the PPT into account in tax planning?
  - what is the expected relationship between the PPT and domestic anti-avoidance doctrines and statutory general anti-avoidance rules?
  - of what, if any, relevance is the amended preamble text to the expected application of the PPT?
  - what is the expected relationship between the PPT and specific anti-avoidance provisions in domestic law and tax treaties (including other provisions of the MLI)?
  - for jurisdictions that have not signed the PPT, what alternatives exist under bilateral treaties and/or domestic law and how are these administered?
- regarding the LOB : how are LOB provisions actually implemented since the MLI?
- regarding other provisions of the MLI:
  - what impact is the MLI expected to have on the resolution of tax disputes under the mutual agreement procedure and arbitration?
  - what if any procedures have been adopted to administer the mutual agreement procedure and arbitration?