The OECD/G20 BEPS Project – Luxembourg moves to ratify the MLI

4 July 2018

In brief

In 2017, Luxembourg was one of the original 68 jurisdictions to sign the OECD-sponsored Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS – commonly referred to as the "Multilateral Instrument" or "**MLI**".

On 3 July 2018, the Luxembourg Government introduced a Bill of law (Bill N° 7333), approving the text of the MLI. This paves the way for formal ratification of the MLI by Luxembourg, which will occur once the Luxembourg Parliament votes to approve this Bill.

The Bill simply contains two Articles, one of them formally approving the text of the MLI as signed.

At this stage, the timeline for ratification remains uncertain. However, if Luxembourg both ratifies the MLI, and deposits the instrument of ratification with the OECD, before 1 October 2018, then the BEPS-driven changes made by the MLI will begin to take effect for provisions involving withholding taxes for a small number of Luxembourg's tax treaties as from 1 January 2019. The changes are likely to take effect for many more treaties as from 1 January 2020.

In detail

The Bill and ratification

Luxembourg's international tax regime requires all double tax treaties that it wishes to enter into to be ratified by way of legislation, initially presented in the form of a Bill and then consulted, debated and voted in the *Chambre des Députés*, Luxembourg's 60-seat unicameral Parliament. This same process for ratification is being applied for the MLI.

Bill N° 7333 simply contains two Articles. The first one is approving the text of the MLI as signed. The text of the English language version of the MLI, as signed by Luxembourg and 77 other countries (as at 7 June 2017), is appended as part of the text of the Bill.

The second article refers to the various reservations and notifications that Luxembourg confirmed to the OECD on 7 June 2017 when signing the MLI. An outline of these reservations and notifications – referred to as Luxembourg's "MLI position" – was set out in the PwC Flash News of 12 June 2017 entitled "The OECD/G20 BEPS Project – Luxembourg signs the "Multilateral Convention"" (https://www.pwc.lu/en/tax-consulting/docs/pwc-tax-120617.pdf) Luxembourg has not since made any changes (e.g. withdrawing any reservations made) to its MLI position.

Next steps – the timeline

No date has yet been set for any debate on the Bill, or vote by, the *Chambre des Députés*, and there needs to be consultation with the *Conseil d'Etat* (State Council) and other public bodies before the Bill can be voted. Bills can thus take some months, and be amended substantially, before becoming law. However, given the simple nature of this Bill and the commitment already made by the Government in signing the MLI, the timeline for this Bill is likely to be shorter than most. The current Government is also thought to be keen to have the MLI ratified before it faces a forthcoming General Election, scheduled for 14 October 2018.

The date on which MLI measures come **into force** is based not on the date that an MLI signatory ratifies the MLI, but on the date that the relevant "instrument of ratification" is deposited with the OECD. For Luxembourg, it is reasonable to expect that this deposit would occur very promptly after the Bill becomes law.

In accordance with its provisions, the MLI is going to enter into force under international law on 1 July 2018, this being because the first five signatory countries had deposited their instruments of ratification before the end of March 2018. For Luxembourg, the MLI will enter into force on the first day of the fourth month after Luxembourg deposits its instrument of ratification. For example, assuming that ratification and deposit occurs in September 2018, the MLI would enter into force for Luxembourg on 1 January 2019.

The MLI mechanism (set out in its Article 35) for its provisions then to **take effect** is complex. Importantly, MLI provisions – such as the "minimum standard" to prevent treaty abuse, which for the majority of MLI signatories will implement the "Principal Purposes Test" that potentially denies treaty benefits – can only come into effect once **both** the jurisdictions whose treaties are being modified by the MLI have not only signed the MLI, but also **ratified** it. For treaty provisions involving withholding taxes, as a general rule the MLI modifications will take effect on the first day of the calendar year following that during which the **later** of the parties to the treaty concerned ratifies the MLI.

As at 29 June 2018 (the date of the latest MLI status update by the OECD), only nine countries out of the 82 signatories to date had proceeded to ratify the MLI. If Luxembourg does ratify the MLI before the end of September 2018, it would still be among the earlier countries to ratify. MLI-mandated changes to withholding taxes would begin to take effect from 1 January 2019, but only for those of Luxembourg's treaties where the counterparty has both confirmed that the treaty is to be covered by the MLI (a "covered tax agreement"), ratified the MLI, and deposited instruments before 30 September 2018. This means that only Luxembourg's treaties with Austria, Isle of Man, Jersey, Poland, Serbia, Slovenia, Sweden and the United Kingdom (Luxembourg has not concluded a treaty with New-Zealand) – and any others where the treaty partner concerned also ratifies before the end of September 2018 – would have MLI provisions affecting withholding taxes (for example, the "Principal Purposes Test") in effect for 2019.

Hence, unless there is a much more rapid rate of progress by other MLI signatories to ratify the MLI, even if Luxembourg does complete the ratification process started by this Bill before the end of September 2018, most of Luxembourg's treaty network will still not be affected by MLI-mandated modifications until 2020. However, assuming that many more MLI signatories will have completed the ratification process before October 2019, 1 January 2020 is likely to be the date on which the MLI begins to have a much more widespread impact. Furthermore, treaties with countries that have yet to sign the MLI – such as the United States – cannot be affected by MLI modifications, unless and until the country concerned has both subsequently signed the MLI and gone through its ratification process.

In conclusion

The publication of this Bill Nº 7333 is an important step towards BEPS-driven changes beginning to affect Luxembourg's tax treaty network. The timeline for these changes will become clearer once the Bill becomes law and the MLI is thus ratified, and Luxembourg then deposits its instrument of ratification with the OECD.

However, if this occurs before 1 October 2018, then the BEPS-driven modifications to treaties brought into effect by the MLI (such as (in many treaties) the requirement to satisfy the "Principal Purposes Test" in order for treaty benefits such as reduced rates of withholding tax to remain available) will begin to take effect for a small number of Luxembourg's tax treaties as from 1 January 2019. These changes are likely to take effect for many more treaties as from 1 January 2020.

This Bill is another indication of Luxembourg's readiness to evolve and adapt to a "post-BEPS" international tax environment.

Subscribe to our Flash News on
www.pwc.lu/subscribe

Let's talk

Valéry Civilio	Partner	+352 49 48 48 3109	valery.civilio@lu.pwc.com
Sami Douénias	Partner	+352 49 48 48 3060	sami.douenias@lu.pwc.com
Alina Macovei	Partner	+352 49 48 48 3122	alina.macovei@lu.pwc.com
Gérard Cops	Partner	+352 49 48 48 2032	gerard.cops@lu.pwc.com
Fabien Hautier	Partner	+352 49 48 48 3004	fabien.hautier@lu.pwc.com
Guy van der Heyden	Partner	+352 49 48 48 3182	guy.van.der.heyden@lu.pwc.com
Laurent de La Mettrie	Partner	+352 49 48 48 3007	laurent.de.la.mettrie@lu.pwc.com
Alexandre Jaumotte	Partner	+352 49 48 48 5380	alexandre.jaumotte@lu.pwc.com
Vincent Lebrun	Partner	+352 49 48 48 3193	vincent.lebrun@lu.pwc.com