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THE MLI: GETTING CLOSER

On June 21, 2019, royal assent was given to Bill C-82 (An Act To Implement a Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion and Profit Shifting). This is another step in the progress of the multilateral instrument (MLI), which sits on top of and modifies bilateral tax treaties in order to curb tax treaty abuse and achieve the OECD's BEPS goals. As the MLI gets closer to full implementation, it is useful to review the effective dates and examine a software tool provided by the OECD to analyze the impact of the MLI on any pair of countries.

The critical question is when the government will deposit its instrument of ratification with the OECD. The MLI will enter into force in Canada on the first day of the month that is three calendar months after the deposit date. For example, if the deposit date is August 15, 2019, then the in-force date will be November 1, 2019.

Seventy-five of Canada's tax treaties are covered by the MLI—that is, are covered tax agreements (CTAs). Canada's treaties with the United States, Germany, and Switzerland are not covered tax agreements: the United States is not a signatory to the MLI, and Canada has been involved in treaty negotiations with Germany and Switzerland. In addition, the MLI will modify a CTA only if both CTA partners have ratified the MLI. As of the end of June 2019, 22 of the 75 countries that have CTAs with Canada have ratified the MLI; these notably include the United Kingdom, Singapore, Luxembourg, Israel, and Australia.

Further, certain measures will be delayed beyond the mutual in-force date of Canada and the other country:

- Withholding taxes: The MLI will take effect beginning on the first day of the next calendar year. For example, if the MLI for both Canada and another CTA partner came into force in 2019, the effective date would be January 1, 2020.
- Other taxes: The MLI will take effect for taxation years beginning on or after the date that is six months after the in-force date. For example, where the MLI is already in force with a CTA country and Canada's MLI comes into force on November 1, 2019, this provision will take effect for taxation years that begin on or after May 1, 2020.

The specific measures that the MLI will add to any particular bilateral tax treaty depend on the choices made by the two countries from a list the MLI provides. Canada's choices have been described in prior articles, and further choices may be made on the deposit date (or at any subsequent time). The same possibility of change applies to the other country, of course. Thus, to help practitioners negotiate this maze, the OECD has created a matching database (currently released in beta [provisional] form) that allows users to determine which provisions apply to any particular country pair. As described in the manual, it "provides tabulated data extracted from the list of reservations and notifications (the 'MLI Position') provided by each Signatory to the MLI upon signature or, when applicable, the MLI Position deposited upon ratification." Canada's positions provided at the moment are those supplied on signature and do not reflect subsequent announcements; presumably, these will be updated on ratification.

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