TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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111 | Implementation of the MLI

Australia started implementation of the MLI – multilateral instrument – in 2017 and obtained Royal Assent in August 2018.

Implementation of the MLI

But whether the MLI will actually apply to its tax treaty with another country, depends on whether and how that country ratifies the MLI from their side.

Simon Dorevitch of A & A Tax Legal Consulting will tell you in this episode how this actually works. Here are our notes from that interview.

Australia

Australia signed the multi-lateral instrument in June 2017, obtained royal assent on 24 August 2018 and deposited its instrument of ratification with the OECD straight after that in September 2018. So for Australia the MLI will enter into force on 1 January 2019 or after.

Two to Tango

But it takes two to tango. Whether and how the MLI actually applies to a specific tax treaty depends on whether and how Australia and the other country ratified the MLI and what articles they adopted.

Covered Tax Agreement

Each jurisdiction signing the MLI needs to identify which of their bilateral tax treaties they want the MLI to cover and modify. A bilateral tax treaty covered by the MLI is called a covered tax agreement – CTA.

For the MLI to actually modify a double tax treaty between two countries, both countries need to identify their bilateral treaty as a covered tax agreement. If they don’t or only one country does and not the other, then that particular double tax treaty won’t change through the MLI.

This is the case with Austria, Korea, Sweden and Switzerland. Australia identified the tax treaties with them as CTAs but they didn’t in return. So these treaties won’t change until Australia, Korea, Sweden and Switzerland do. And the US of course doesn’t participate in all this anyway but do their own thing.

Australia identified all its double tax agreements as CTAs, except the one with Germany. The one with Germany is already based on the MLI.

MLI Position

The MLI is not one-size-fits-all. The MLI consists of many articles that address the 15 actions of the OECD's BEPS project. Each country decides which articles it adopts and hence accomodate their

This way a jurisdiction can tailor their adoption to fit their particular national circumstances and accommodate unique aspects of their treaty network.

When a country signs the MLI, it needs to notify the OECD Secretariat of its MLI position. A country's MLI position is the set of articles it has adopted. You can sEach jurisdiction is required to notify the OECD Secretariat of its set of provisional choices (referred to as that jurisdiction's 'MLI position') at the time of signature (of the MLI), and confirm them at the time of ratification. Jurisdictions' MLI positions are available on the OECD website.

While some MLI articles are mandatory (minimum standards), most are optional. Jurisdictions can choose to adopt the minimum standards only, or they can choose to also adopt some, or all, of the optional articles. If there is a bilateral match, the MLI will modify, but not directly amend, nominated tax treaty clauses. Other unrelated parts of the treaties will remain unchanged.

All this is just our brief take on the issue, but please listen to the episode above. Simon Dorevitch explains all this in a much better way than we ever could.

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