

Multilateral Instrument (MLI) will enter into force for Canada on December 1, 2019

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Canada announced today that the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* [PDF] — also known as the Multilateral Instrument or MLI — will enter into force for Canada on December 1, 2019. As a result, the MLI will enter into effect for Canada's tax treaties with many countries (a) on January 1, 2020 for withholding taxes, and (b) for other taxes (including capital gains taxes), for tax years beginning on or after June 1, 2020 (which for calendar year taxpayers would be January 1, 2021).

The MLI may enter into effect at a later date for Canada's tax treaties with countries that have not completed their domestic procedures to cause the MLI to come into effect. For such treaties, the MLI will enter into effect (i) for withholding taxes, on the first day of the calendar year that begins on or after the date on which the MLI enters into force for the other country, and (ii) for other taxes, for tax years beginning six months after the MLI enters into force for the other country. (In general, the MLI enters into force for a country on the first day of the month beginning three months after the country deposits its instrument of ratification with the OECD).

Covered Tax Agreements

Canada signed the MLI in June 2017, listing 75 of its 93 tax treaties as being potentially revised by the MLI (Covered Tax Agreements). The federal legislation to [ratify the MLI in Canada](#) is contained in [Bill C-82, An Act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting](#), which received Royal Assent on June 21, 2019.

Each jurisdiction was required to provide a list of expected Covered Tax Agreements at the time of signature, providing a definitive position upon the deposit of its instrument of ratification, acceptance or approval of the MLI. Canada's definitive position on its Covered Tax Agreements and reservations is included in its [Status of List of Reservations and Notifications upon Deposit of the Instrument of Ratification](#) [PDF].

The number of Covered Tax Agreements has increased to 84, with the addition of Algeria, Armenia, Ivory Coast, Kuwait, Oman, Papua New Guinea, Peru, Trinidad and Tobago and the United Arab Emirates.

The MLI will not affect Canada's tax treaties with the United States (which has not signed the MLI) and with Germany and Switzerland (with which Canada has announced bilateral treaty negotiations). Other Canadian tax treaties not covered by the MLI include Ecuador, Guyana, Kyrgyzstan, Taiwan, Uzbekistan and Venezuela.

Update on reservations

When Canada signed the MLI, it chose to adopt the minimum standards in the MLI with the addition of binding arbitration for treaty disputes. This included:

- Article 6 – purpose of a Covered Tax Agreement
- Article 7 – prevention of treaty abuse – listing the specific treaty limitation on benefits rules in its affected treaties that may be replaced by the MLI’s limitation rules (provided the relevant treaty partner also agrees to the change)
- Article 16 – Mutual Agreement Procedure
- Article 17 – corresponding adjustments
- Part 6 (Articles 18 to 26) – mandatory binding arbitration

Canada announced its intent to adopt certain additional MLI provisions in May 2018 (as discussed in our [May 29, 2018 Osler Update](#)). Canada’s definitive list of reservations are generally aligned with its previously announced positions, and include the adoption of:

- Article 4 – providing for the use of certain factors by competent authorities when resolving dual resident entity cases. Canada has listed the specific treaty residence tiebreaker rules in its affected treaties that may be replaced by the MLI’s residence tiebreaker rules (provided the relevant treaty partner also agrees to the change).
- Article 8 – adding a one-year holding period test to access treaty-based withholding tax reductions on dividends which depend on levels of ownership, for most of its Covered Tax Agreements.
- Article 9 – adding a one-year lookback test when determining whether capital gains result from the alienation of shares (or other equity interests) that derive their value principally from immovable property, for most of its Covered Tax Agreements.

We also note that Canada continued to reserve under Article 5(8) for most of its current Covered Tax Agreements in respect of a provision that would allow treaty partners to move from an exemption system to a foreign tax credit system.

Additional background on the MLI

The most significant treaty modifications to be implemented through the MLI will be the addition of a broad anti-avoidance rule into Covered Tax Agreements, referred to as the principal purpose test or PPT. Under the PPT, a treaty benefit may be denied where it is reasonable to conclude that one of the principal purposes of an arrangement or transaction was to gain such benefit, unless it is established that granting the benefit would be in accordance with the object and purposes of the relevant provisions of the treaty. Other minimum standards to be implemented through the MLI include (i) an amended preamble, suggesting that Covered Tax Agreements are intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and (ii) modified dispute resolution procedures, including the adoption of mandatory arbitration procedures. These minimum standards are described in more detail in the Osler Updates [“Canada signs multilateral tax agreement”](#) and [“New PPT rule in the OECD’s Multilateral Instrument to displace Canadian GAAR?”](#)

For further background on the MLI, see our Osler Updates [“Canada begins ratification process for multilateral convention to implement BEPS”](#) and [“Significant tax treaty changes](#)

proposed in multilateral convention.”

For further information on the MLI, the PPT or other tax matters, please contact any member of our National Tax Group.