

Dutch Lower House of Parliament passes Bill on ratification of the MLI

On February 12, 2019 the Dutch Lower House of Parliament passed the Bill for the ratification of the [Multilateral Convention](#) ("MLI") to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) and improve dispute resolution mechanisms. Noteworthy is that the Lower House also agreed to change the MLI position of the Netherlands with respect to preventing the artificial avoidance of permanent establishment status.

Background

The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide. The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to combat treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies. The MLI was developed through negotiation and adopted in November 2016. It was signed by 67 countries on June 7, 2017 ([see our June 2017 client memorandum](#)). The MLI currently covers 87 jurisdictions and entered into force on July 1, 2018 for those countries who had promptly ratified it.

MLI position: prevention of artificial avoidance of PE status

The Netherlands initially indicated that it fell within the scope of the MLI with respect to almost all options and thus had relatively few reservations. The Dutch Government also opted for the measure to prevent the artificial avoidance of permanent establishment status in relation to BEPS, including through the use of commissionaire arrangements (Article 12 MLI). However, several MEPs were concerned that some treaty partners may strategically attempt to maximize tax revenue to the detriment of other countries. In order to prevent such behaviour, there should always be an effective means of dispute resolution as long as there is no international consensus on the definition of permanent establishment or on the profit allocation to a permanent establishment. Consequently, the Netherlands will make a reservation on Article 12 until effective dispute resolution between a sufficient number of signatories to the MLI and the Netherlands is in place. If sufficient progress is made in this respect or once the rules on profit allocation are clear, the Government could submit a bill by the end of 2020 in order to withdraw the reservation.

Next steps

The Bill will now be presented to the Upper House. The MLI provisions on Covered Tax Agreements with a match (listed by jurisdictions that have ratified before the end of March) can enter into effect for the Netherlands as of January 1, 2020 at the earliest.

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