GT GreenbergTraurig | 50 ANNIVERSARY

Cross-Border Tax Planning | Alert

July 2017

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

On June 7, 2017, 68 jurisdictions signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI) at the Organisation for Economic Co-operation and Development (OECD) in Paris. The United States, Saudi Arabia, and Brazil are the only G-20 countries not to sign. The signing ceremony marks a milestone in the OECD's continued effort against Base Erosion and Profit Shifting (BEPS) after several years of effort to produce the MLI. The MLI implements tax treaty related measures to prevent treaty abuse, improve dispute resolution, prevent avoidance of permanent establishment status and address other hybrid mismatch arrangements. The MLI is not a standalone treaty, but rather modifies existing bilateral tax treaties. Over 1,100 tax treaties are expected to be modified by the MLI.

Tax Treaty Changes

The MLI requires jurisdictions to abide by basic standards developed by the BEPS project.

> Treaty Abuse and Shopping

The Principal Purposes Test is a new anti-abuse rule based on the principal purposes of transactions or arrangements and seeks to modify arrangements put in place with the principal purpose of obtaining the benefits of a tax treaty. Under this test, if one of the principal purposes of a transaction or arrangement is to obtain treaty benefits (*e.g.*, a lower withholding tax in the case of treaty shopping), these benefits would be denied unless it is established that granting the benefits is in accordance with the purpose of the provisions in the treaty. This approach is similar to domestic anti-abuse and anti-avoidance rules.

- Dispute Resolution

The MLI introduces a binding arbitration mechanism to resolve disputes in cases in which a taxpayer disputes a tax treaty application. The current arbitration process, called the mutual agreement procedure (MAP), only requires parties to use their best efforts to resolve disputes, leading to lengthy unresolved issues. The MLI binding arbitration process seeks to correct this weakness and provide an expedited process before an independent and impartial decision maker.

- Permanent Establishment

The MLI changes the permanent establishment definition and addresses techniques used to inappropriately avoid the existence of a permanent establishment, including through the replacement of distributors with commissionaire arrangements and the use of employees who are labeled as "independent agents." The changes also address specific activity exceptions in the OECD Model Tax Convention by restricting the types of activities an employee can do without creating a permanent establishment.

- Hybrid Mismatches

The MLI addresses the issue of hybrid mismatches in situations where jurisdictions have different treatments as to the transparency of entities for tax purposes. The MLI also modifies the rules regarding treaty residency of an entity that is a resident of more than one jurisdiction. Finally, the MLI provides several options for the elimination of double tax on items such as dividends.

Scope and Timing

The MLI modifies tax treaties that are "Covered Tax Agreements," which are agreements for the avoidance of double taxation between signatory parties that those parties have indicated that they wish to modify. The MLI modifications are expected to become effective in 2018.

Signatories are also given flexibility to reserve or opt-out completely from provisions. Due to many signatories reserving on provisions, the final effect of the MLI will not be known until jurisdictions ratify the MLI in their domestic processes.

This *GT Alert* was prepared by **Manuel Rajunov**‡ and **Josh Prywes.** Questions about this information can be directed to:

- Manuel Rajunov‡ | +1 214.665.3664 | rajunovm@gtlaw.com
- Josh Prywes | +1 214.665.3626 | prywesj@gtlaw.com
- Or your Greenberg Traurig attorney

‡*Registered Foreign Legal Consultant in Texas; Admitted to the practice of law in Mexico.*

Albany
+1 518.689.1400

Amsterdam
+ 31 20 301 7300

Atlanta
+1 678.553.2100

Austin
+1 512.320.7200

Berlin¬
+49 (0) 30 700 171 100

Berlin-GT Restructuring¯
+49 (0) 30 700 171 100

Boca Raton
+1 561.955.7600

Boston
+1 617.310.6000

Chicago
+1 312.456.8400

Dallas
+1 214.665.3600

Delaware
+1 302.661.7000

Denver
+1 303.572.6500

Fort Lauderdale
+1 954.765.0500

Houston
+1 713.374.3500

Las Vegas
+1 702.792.3773

London*
+44 (0)203 349 8700

Los Angeles
+1 310.586.7700

Mexico City+
+52 55 5029.0000

Miami
+1 305.579.0500

New Jersey
+1 973.360.7900

New York
+1 212.801.9200

Northern Virginia
+1 703.749.1300

Orange County
+1 949.732.6500

Orlando
+1 407.420.1000

Philadelphia
+1 215.988.7800

Phoenix
+1 602.445.8000

Sacramento
+1 916.442.1111

San Francisco
+1 415.655.1300

Seoul∞
+82 (0) 2.369.1000

Shanghai
+86 (0) 21.6391.6633

Silicon Valley
+1 650.328.8500

Tallahassee
+1 850.222.6891

Tampa
+1 813.318.5700

Tel Aviv^
+03.636.6000

Tokyo¤
+81 (0)3 4510 2200

Warsaw~
+48 22 690 6100

Washington, D.C.
+1 202.331.3100

Westchester County
+1 914.286.2900

West Palm Beach
+1 561.650.7900