

## IRAS FAQs on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”)

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### **Useful links**

1. OECD’s webpage on the MLI: <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>
2. IRAS’ webpage on the MLI: <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/Multilateral-Instrument/>
3. IRAS’ webpage on the mutual agreement procedure: <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/Mutual-Agreement-Procedure/>
4. List of DTAs concluded by Singapore: <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/List-of-DTAs--limited-treaties-and-EOL-arrangements/>
5. Singapore’s press release (16 June 2016): <https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2016/Singapore-Joins-Inclusive-Framework-for-Implementing-Measures-against-Base-Erosion-and-Profit-Shifting--BEPS-/>
6. Singapore’s press release (7 June 2017): <https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2017/Singapore-To-Sign-The-Multilateral-Convention-To-Implement-Tax-Treaty-Related-Measures-To-Prevent-Base-Erosion-And-Profit-Shifting/>

## **1. What is the MLI?**

The MLI is an agreement negotiated under Action 15 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. It is intended to allow jurisdictions to swiftly amend their tax treaties to implement the tax treaty related BEPS recommendations. Singapore has worked with more than 100 jurisdictions around the world to develop the MLI and the negotiation of the MLI text was concluded on 24 November 2016 in Paris.

The MLI includes both mandatory provisions (i.e. the minimum standards under the BEPS Project) as well as non-mandatory provisions. Jurisdictions have the flexibility to determine how its DTA network would be amended by the MLI. More information on the MLI can be found on the OECD website.

## **2. Why did Singapore sign the MLI?**

Singapore joined the Inclusive Framework on BEPS in June 2016 as a BEPS Associate. By joining this framework, Singapore will work with other participating jurisdictions to ensure the consistent implementation of the measures recommended under the BEPS Project, and a level playing field across jurisdictions. As a BEPS Associate, Singapore has committed to implement the four minimum standards under the BEPS Project, namely the standards on countering harmful tax practices, preventing treaty abuse, transfer pricing documentation, and enhancing dispute resolution.

It is in the interest of businesses and governments alike that the BEPS minimum standards are implemented broadly and consistently as a global standard. In line with Singapore's commitment as a BEPS Associate, Singapore is pleased to join many other jurisdictions in signing the MLI as this represents a strong step forward for jurisdictions to work together to update their DTAs to prevent treaty abuse.

## **3. What is the impact on Singapore's DTA network when Singapore ratifies the MLI?**

The MLI provides flexibility for a jurisdiction to (i) determine which of its DTAs it would like to amend using the MLI; and (ii) indicate which provisions in the MLI it would like to adopt and how such provisions should be adopted.

For example, if both Singapore and Jurisdiction A have ratified the MLI, the bilateral DTA between Singapore and Jurisdiction A will be amended only if both Singapore and Jurisdiction A indicate that they would like to amend their bilateral DTA using the MLI. In the MLI context, such a bilateral DTA is referred to as a "Covered Tax Agreement (CTA)". A provision in the DTA between Singapore and Jurisdiction A (i.e. the CTA) will be amended by an MLI provision only if both Singapore and Jurisdiction A have taken the same position regarding that provision in the MLI.

#### **4. How did Singapore determine its positions on the MLI?**

The MLI allows jurisdictions to swiftly implement the tax treaty related BEPS recommendations. These recommendations include both mandatory provisions (i.e. the minimum standards under the BEPS Project) as well as non-mandatory provisions.

Singapore has adopted these mandatory provisions in the MLI:

- (i) Article 6 (Purpose of a covered tax agreement) – To include a statement of intent in the preamble of the covered tax agreement that the DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance
- (ii) Article 7 (Preventing treaty abuse) – To include a general anti-abuse rule in the covered tax agreement, commonly known as the Principal Purpose Test (PPT).
- (iii) Article 16 (Mutual agreement procedure) – To include a mechanism to allow a Singapore resident taxpayer to seek assistance from IRAS when the taxpayer encounters taxation in a DTA jurisdiction that is not in accordance with the intended application of the DTA.

Singapore has also adopted a number of non-mandatory provisions in the MLI, which it believes will be beneficial for its taxpayers. One such example is the adoption of the mandatory binding arbitration provision in its DTAs. This provision will provide an alternative dispute resolution mechanism if the competent authorities are unable to reach agreement or are unable to do so in a timely manner. The mandatory binding arbitration provision will be included in its DTAs if its respective DTA partners also choose to adopt the provision.

Singapore's positions on the MLI can be found on IRAS' website.

#### **5. When will the MLI take effect for Singapore?**

Much like the process for the entry into force for Singapore's DTAs, the MLI is also subject to a ratification process before its provisions will take effect. Jurisdictions wishing to ratify the MLI will have to deposit an instrument of ratification with the Secretary-General of the OECD. The MLI entered into force on 1 July 2018 after the deposit of instruments of ratification by five jurisdictions. Singapore deposited its instrument of ratification on 21 December 2018. The MLI has entered into force for Singapore on 1 April 2019.

#### **6. When will a DTA be amended by the MLI?**

Singapore deposited its instrument of ratification on 21 December 2018, and the MLI has entered into force for Singapore on 1 April 2019. A covered tax agreement between Singapore and its DTA partner will only be amended by the MLI after both Singapore and its DTA partner have deposited their instrument of ratification with the Secretary-General of the OECD. The amendments will generally take effect from the basis period following the expiration of a period of six calendar months after the MLI enters into force for both jurisdictions.

#### **7. How will taxpayers know which DTA has been amended by the MLI?**

When a DTA is to be amended by the MLI, the changes to the DTA will be implemented via a Gazette Order. Taxpayers can refer to IRAS' website for more information on the DTAs that have been amended by the MLI, and how these DTAs have been amended.

**8. Given the different wordings in many DTAs, will the MLI create a lot of uncertainty?**

The MLI provides for compatibility clauses that specify when the MLI will modify an existing DTA provisions. In addition, signatories to the MLI are required to provide a notification for the specific provisions of a covered tax agreement that are to be replaced or modified by the MLI. The relevant provision in the covered tax agreement will be modified only if both treaty partners agree. IRAS acknowledges that there may be some uncertainty as to when and how a DTA will be modified by the MLI. IRAS will provide greater clarity and certainty on IRAS' website on how and when each relevant DTA will be amended by the MLI, as and when these DTAs are amended by the MLI.

**9. What other jurisdictions have signed the MLI?**

As at 21 December 2018, when Singapore deposited its instrument of ratification, 85 jurisdictions have signed the MLI. This includes many OECD jurisdictions (such as France, Germany and Italy) and other jurisdictions in the region (such as China, Indonesia and Japan).

The list of jurisdictions that have signed the MLI, as well as those that have signed and ratified the MLI, can be found on the OECD website.

**10. How can taxpayers know the positions of other jurisdictions?**

The positions of other jurisdictions can be found on the OECD website.

**11. How will Singapore update those DTAs that are not covered by the MLI with treaty related BEPS measures?**

In line with Singapore's commitment as a BEPS Associate, Singapore will work with its DTA partners on a bilateral basis to update these DTAs.

**12. Will including the PPT in Singapore's DTAs make it more difficult for Singapore resident taxpayers to enjoy treaty benefits?**

The PPT seeks to deny DTA benefits in cases where one of the principal purposes of the arrangements or transactions is to secure a benefit under the DTA in a manner that is contrary to the object and purpose of the DTA. Taxpayers and investors with bona fide commercial transactions or operations should not be unduly concerned with the PPT, which seeks to address abusive arrangements.

In fact, the PPT is not new to Singapore's DTAs. It was already present in many of Singapore's DTAs and also in the domestic laws of many jurisdictions, including Singapore.

When a Singapore resident taxpayer encounters taxation which is not in accordance with the provisions of a DTA, he can seek assistance from IRAS to contact the other DTA partner to resolve the dispute. This mechanism is provided under the Mutual Agreement Procedure article in the DTA and further details on the application for assistance are available on IRAS' website.