



Canada Enacts the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

JULY 2019



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On June 21, 2019, Canada's Department of Finance announced that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (also known as the Multilateral Instrument, or MLI) sponsored by the Organisation for Economic Co-operation and Development (OECD), has been enacted into law in Canada.

NEW PROVISIONS

The following provisions were enacted into law as part of the implementation legislation:


- A 365-day holding period for shares of Canadian companies held by non-resident companies to ensure that the lower treaty-based rate of withholding tax on dividends will not be available to non-resident companies that engage in certain short-term share acquisitions. This requirement will apply only to those tax treaties covered by the MLI and the tax treaties limit the taxation of dividends if the beneficial owner of a dividend is a company that owns, holds, or controls more than a certain amount of shares or voting power of the dividend paying company.
- A 365-day test period for non-residents to determine whether capital gains on the disposition of shares or other interests that do not derive a certain percentage of their value from Canadian immovable property are exempt from tax.
- A provision for resolving dual resident entity cases.
- A provision intended to allow certain treaty partners to move from an exemption system as their method of providing relief for double taxation, to a foreign tax credit system.
- BEPS minimum standards on treaty abuse and improving dispute resolution when it comes to disputes about which jurisdictions can tax what types of income, or any difficulties from the interpretation or application of a tax treaty arise on occasion. Many tax treaties between jurisdictions contain a Mutual Agreement Procedure (MAP) provision that provides for a process used to resolve such disputes. With the widespread existence of this provision in tax treaties, a potential focus area for stakeholders will be access to MAP and working to resolve cases within a reasonable timeframe. Canada has confirmed its commitment, under the MLI, to implement the minimum standard with respect to the dispute resolution features of its tax treaties.

- Mandatory binding arbitration in relation to tax treaty disputes. There is a Mandatory binding arbitration mechanism that obligates the parties to a tax treaty to submit unresolved cases to an independent and impartial decision maker—an arbitration panel. The decision reached by the arbitration panel is binding on the parties. The mandatory binding arbitration procedure adopted through the MLI will be substantially the same as the mandatory binding arbitration procedure under the Canada-United States tax treaty.

For more information on the MLI announcement, please visit the [Department of Finance's website](#).

These provisions were originally proposed in releases made available on May 28, 2018 and June 7, 2017.

Canada is expected to notify the OECD within the next few months that it has ratified the MLI. Foreign investors in Canada are encouraged to review their investing arrangements in light of the anticipated coming into effect of the MLI.



“The next step for Canada is to notify the OECD through the deposit of its instrument of ratification. The MLI will enter into force for Canada on the first day of the month following the expiration of a three-month period from the date of notice to the OECD.”

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