

OECD issues beta version of the Matching Database for the Multilateral Convention to Implement Tax Treaty Related Measures

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In Brief

On 11 July 2017, the Organisation of Economic Co-operation and Development (OECD) issued the beta version of the **matching database** for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “MLI”). This comes on the back of widespread support of the MLI, with Mauritius and Cameroon signing the treaty in early July, bringing the total number of signatories to 70.

Singapore signed the MLI on 7 June 2017, as an early adopter, and lodged with the OECD a provisional list of reservations and notifications. Consistent with its commitments as a member of the inclusive framework for implementing measures to counter base erosion and profit shifting (BEPS), Singapore has adopted the MLI articles relating to preventing treaty abuse (adopting the principal purpose test) and enhancing dispute resolution. It has also adopted the mandatory binding arbitration (choosing the final offer option). At the same time of signing, 68 of Singapore’s 82 in-force double tax agreements (DTAs) have been identified as the covered tax agreements to be updated through the MLI. It should be noted that while Mauritius has signed the MLI, the Singapore-Mauritius DTA has not been listed by Mauritius as a covered tax agreement.

In detail

The MLI provides a convenient platform for countries/territories to update their tax treaties to implement measures to counter BEPS. It provides choices that each party can make e.g., which treaties to be covered and the applicable provisions (by opting for or out of certain clauses), subject to the adoption of certain minimum standards.

Provisional positions lodged by individual countries at the time of signing can be found in the **OECD repository of country positions**. The MLI matching database was introduced by the OECD as an interactive tool showing a line-by-line analysis for matching the choices of one territory with those of another territory based on the provisional positions lodged by countries when they signed the MLI. As such, the database can be used to make projections as to how the MLI would modify a specific tax treaty.

We also provide below a broad overview of Singapore’s provisional positions as lodged with the OECD.

Summary of Singapore’s position

The Ministry of Finance (MOF) and the Inland Revenue Authority of Singapore (IRAS) issued a **press release** on 7 June 2016, reaffirming Singapore’s commitment to the OECD BEPS project.¹ As such, Singapore will adopt the following through the MLI:

- a. **Preventing treaty abuse:** this consists of (i) a statement of intent that a DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and (ii) the adoption of

¹ Singapore committed to joining the OECD’s “**Inclusive Framework for Implementing Measures against Base Erosion and Profit Shifting (BEPS)**” on 16 June 2016 as well as other BEPS developments

a general anti-abuse rule, commonly known as the **principal purpose test** (PPT), which operates to deny treaty benefit if it is reasonable to conclude that obtaining the benefit was one of the principal purposes of entering into any arrangement or transaction (unless the granting of such benefit is in accordance with the object and purpose of the treaty).

- b. **Enhancing dispute resolution:** when a Singapore resident taxpayer encounters taxation which is not in accordance with the intended application of the DTA, the taxpayer can seek assistance from the IRAS to contact the treaty partner to resolve the dispute; and the IRAS will notify the affected treaty partner.

Along with the above, Singapore has opted for:

- a. The **discretionary relief provision**, which provide that competent authorities may exercise discretion to allow treaty claim in certain situations, if such benefit is denied under PPT.
- b. The **mandatory binding arbitration** provision (choosing the final offer option) to help facilitate the resolution of cross border disputes.
- c. The broader **specific activity exemption test**, under which the activities listed in the permanent establishment exclusions in DTAs are not subject to an overall preparatory or auxiliary test (unless that is already provided for in the existing DTAs).
- d. A provision to allow corresponding adjustment and consultation between the competent authorities in the event of a transfer pricing adjustment. This provision is already present in most of Singapore's treaties.

Further details of Singapore's provisional position can be found in the [OECD repository of country positions](#).

I. In-scope Countries

Singapore intends to update its DTAs via the MLI with treaty partners that are members of the Ad Hoc Group which participated in the development of the instrument. The agreed changes to each DTA will enter into force three months after the MLI has been ratified by both Singapore and the corresponding treaty partners.

Singapore has 82 DTAs as at 1 June 2017. At the time of signing, it has identified 68 DTAs to be updated through this instrument. Treaty partners which are parties to the MLI but which have not included their Singapore treaty as a covered tax agreement include Germany, whilst Singapore did not list Korea as a covered tax agreement (and vice versa). Notable treaty partners of Singapore which were not signatories of the MLI on 7 June 2017 include Malaysia, the Philippines, Taiwan, Thailand and Vietnam. While the Mauritius treaty has been listed by Singapore as a covered tax agreement, Mauritius, which signed the MLI on 5 July 2017, has not done the same (and neither has it listed its treaty with India as a covered tax agreement).

The OECD expects more parties to sign the MLI over time. Taxpayers will need to monitor this space to track when new DTAs are added.

Please refer to Appendix A for more details.

II: Treaty Access – PPT as the default anti-treaty abuse clause

The MLI provides for PPT to be the default anti-abuse measure. In general, the PPT wording will be included into treaties where there isn't any purpose test, or that it will replace any existing provision of a similar nature (e.g. the main purpose test adopted in some of Singapore's treaties). Exceptions to PPT apply if a party opts to meet the minimum standard by adopting other anti-treaty shopping provisions (e.g., the detailed limitation on benefits clause along with specific anti-abuse measures).

The MLI also contemplates situations where one party adopts PPT and the other party chooses the simplified limitation on benefits (simplified LOB) test. In summary, if one party chooses PPT only and the other party to a bilateral agreement chooses simplified LOB, the PPT will apply unless:

- a. the simplified LOB party opts out altogether, but then it must endeavour to reach a mutually satisfactory way of satisfying the minimum standard with the other party, or
- b. the PPT party chooses a symmetrical outcome (i.e. both parties apply a simplified LOB in addition to the first including PPT), or to allow an asymmetrical outcome (i.e. one party includes PPT alone and the other party opts for simplified LOB together with PPT).

As Singapore did not elect to apply the simplified LOB clause or to accept asymmetrical outcome in its covered tax agreements, PPT will apply (unless the simplified LOB party choose to opt out altogether i.e. option (a)).

Some practical illustrations of how the MLI provisions will apply in Singapore include:

- a. Singapore has committed to adopting the PPT option as the measure to counter treaty abuse. The IRAS has identified 17 covered DTAs which already contain existing anti-treaty abuse language (via the main purpose test). These will be replaced with PPT upon ratification by both treaty parties.
- b. A symmetry outcome will ensue in the Singapore-China DTA, as both countries have chosen to adopt the PPT.
- c. The interaction of PPT with simplified LOB can be seen in the Singapore-Indonesia DTA. Indonesia has adopted the simplified LOB, but it did not make any reservation to opt out altogether (i.e. option (a) above) if the other party neither adopts simplified LOB nor accepts an asymmetry outcome, which is the case for Singapore. As such PPT will apply between Singapore and Indonesia upon the MLI being ratified.

III: Dispute resolution

The minimum standard under the MLI for dispute resolution (amongst others) aligns the time for notifying incidence of double taxation to the competent authority to that provided in the OECD Model Tax Convention i.e. three years from the first notification of action resulting in double taxation.

The MLI also provides an option for mandatory binding arbitration when both competent authorities are unable to resolve the case within two years (unless otherwise agreed). Other than in specific instances, tax authorities will have to accept the decision provided by the independent arbitration panel.

Mandatory binding arbitration will apply only if both parties elect for it. Even then, one party may reserve on the scope of matters that are eligible for arbitration, or choose to preserve the mandatory binding arbitration provisions in existing agreements, with flexibility to agree on how to proceed with the arbitration process.

Singapore has committed to aligning the time frame for notifying incidence of double taxation to the resident state competent authority to three years, and to resolve mutual agreement procedure (MAP) cases within two years, after which the unresolved cases will be subject to mandatory binding arbitration if the other party so agrees. Of the 82 DTAs, only the Mexican agreement contains an arbitration clause. It should, however, be noted that at the time of signing, Mexico has not opted to adopt the mandatory arbitration clause. Hence, there is as yet no matching position under the MLI.

Furthermore, Singapore has made a number of elections, such that:

- a. Mandatory arbitration will not apply to Singapore if the other party opts for the independent opinion option.

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- b. Singapore will not admit issues where a court has already rendered a decision and will terminate the process where a court decision is reached during arbitration. This is in line with the IRAS's recent clarification on APA/ MAP case admissions under the 2017 edition of the Singapore Transfer Pricing Guidelines;
 - c. Singapore has opted for the confidentiality provision, and will exclude cases involving application of domestic general anti-avoidance rules, case law or juridical doctrines.
 - d. The parties may agree on a different resolution of all unresolved issues within three months after the arbitration decision.
 - e. The MLI arbitration provisions may apply to a case presented before the MLI is in force if both parties so agree.

That Singapore is prepared to partake in speedy resolution of double taxation cases should be welcomed by the taxpayers who are seeing sweeping changes being made to the international tax regime. However, Singapore is one of (only) 25 countries which have committed to mandatory binding arbitration. Further, some of these countries have not selected the final offer option. Where the options are not matched, the parties will have to agree on how to proceed, failing which arbitration will not take place.

Other countries have not yet expressed clear reservations/options. How this will interact with Singapore's position will need to be closely monitored.

Closing thoughts

Singapore's commitment to implement the OECD recommendations expediently to counter BEPS reflects its serious intent to adopt international standards, so as to promote a level playing field with key trading partners.

From a conceptual standpoint, the MLI framework facilitates the implementation of BEPS principles in an effective manner, whilst retaining sufficient flexibility for countries to take into account their individual circumstances. This forms the basis to facilitate the agreed BEPS principles to be applied so as to ensure the efficacy of international tax rules.

Not surprisingly, different countries have taken different positions offered by the MLI. Whilst the OECD matching database is a good start in better understanding how the different positions interplay, taxpayers need to assess how the revised treaty provisions apply to their specific facts and circumstances. At a practical level, there will be considerably greater complexity and uncertainty. Multinational companies operating on a cross border basis will need to track these developments closely, so that any implications can be addressed promptly.

Anything else?

For more information on the MLI initiative, please refer to the below:

- [MLI framework](#) and [explanatory statement to the MLI](#) published by the OECD on 24 November 2016 (as summarised herein by [PwC](#)).
- OECD repository of country [provisional positions](#) to the MLI (please find [PwC's summary](#) and comments) and [MLI application toolkit](#).

Appendix A²

Please find a summary of the current status of Singapore's lodgment on the covered DTAs to the MLI.

No	Signatories to the MLI	Signed comprehensive DTAs with Singapore ³	Covered tax agreements that are both listed by Singapore as well as the respective MLI signatory
1	Andorra		
2	Argentina		
3	Armenia		
4	Australia	X	X
5	Austria	X	X
6	Belgium	X	X
7	Bulgaria	X	X
8	Burkina Faso		
9	Cameroon		
10	Canada	X	X
11	Chile		
12	China	X	X
13	Colombia		
14	Costa Rica		
15	Croatia		
16	Cyprus	X	X
17	Czech Republic	X	X
18	Denmark	X	X
19	Egypt	X	X
20	Fiji	X	X
21	Finland	X	X
22	France	X	X
23	Gabon		
24	Georgia	X	X
25	Germany	X	
26	Greece		
27	Guernsey	X	X
28	Hong Kong		
29	Hungary	X	X
30	Iceland		
31	India	X	X
32	Indonesia	X	X
33	Ireland	X	X
34	Isle of Man	X	X
35	Israel	X	X
36	Italy	X	X
37	Japan	X	X
38	Jersey	X	X
39	Korea	X	
40	Kuwait	X	X
41	Latvia	X	X
42	Liechtenstein	X	X
43	Lithuania	X	X
44	Luxembourg	X	X
45	Malta	X	X
46	Mauritius	X	
47	Mexico	X	X
48	Monaco		
49	Netherlands	X	X
50	New Zealand	X	X
51	Norway	X	
52	Pakistan	X	X
53	Poland	X	X

² Please note that Mauritius and Cameroon have also signed the MLI on 5 July and 11 July 2017 respectively.

No	Signatories to the MLI	Signed comprehensive DTAs with Singapore	Covered tax agreements that are both listed by Singapore as well as the respective MLI signatory
54	Portugal	X	X
55	Romania	X	X
56	Russia Federation	X	X
57	San Marino	X	X
58	Senegal		
59	Serbia		
60	Seychelles	X	X
61	Singapore		
62	Slovak Republic	X	X
63	Slovenia	X	X
64	South Africa	X	X
65	Spain	X	X
66	Sweden	X	
67	Switzerland	X	
68	Turkey	X	X
69	United Kingdom	X	X
70	Uruguay	X	X

Notes:

3: Singapore's treaty partners which did not sign the MLI as of 7 June 2017: Albania, Bahrain, Bangladesh, Barbados, Belarus, Brunei, Ecuador, Estonia, Kazakhstan, Laos, Libya, Malaysia, Mauritius, Mongolia, Morocco, Myanmar, Oman, Panama, Papua New Guinea, Philippines, Qatar, Rwanda, Saudi Arabia, Sri Lanka, Taiwan, Thailand, Ukraine, United Arab Emirates, Uzbekistan and Vietnam. Mauritius has since signed the MLI on 5 July 2017, but has not listed the Singapore treaty as a covered tax agreement.



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