

Mexico approves the OECD MLI affecting 55 tax treaties

October 12, 2022

In brief

The Mexican Senate ratified the OECD Multilateral Instrument (MLI) on October 12. As a result the instrument could be in force for Mexico as soon as February 2023.

Action item: Mexican taxpayers, as well as multinationals doing business in Mexico, should assess the potential impacts that the MLI provisions will have in their tax analysis for the application of a tax treaty between Mexico and signatories of the instrument. Taxpayers should evaluate the impact based on the elections made by Mexico and the other jurisdiction to the articles of the MLI for purposes of their covered tax agreement (CTA). The risk of not complying with the MLI provisions could be the loss of treaty relief, including the inability to access the treaty and its overall benefits.

In detail

Background

As part of OECD BEPS Action 15, Mexico on June 7, 2017, signed the MLI as a tool for mitigating tax treaty abuse by implementing treaty-related measures in a synchronized and efficient manner for all countries. As of today, a hundred jurisdictions have signed the Convention.

Of the 60 tax treaties that Mexico has in force and in effect, 55 are considered a Covered Tax Agreement (CTA) under the MLI. The current content of those treaties now will be reformed by the provisions of the instrument that incorporate general anti-abuse rules (GAAR) and other measures in line with the OECD BEPS project, including rules on hybrid mismatches, permanent establishments, treaty abuse (in conjunction with a principal purpose test), mutual agreement procedures, and arbitration.

Observation: While the United States did not sign the MLI, international structures of US multinationals utilizing non-US subholdings, financing platforms, or investing vehicles into Mexico will be affected.

Entry into force and into effect

Assuming Mexico deposits its instrument of ratification with the OECD before the end of October 2022, the MLI will enter into force for Mexico on February 1, 2023. However, if Mexico delays the deposit of its ratification beyond this

month, the Convention will enter into force on the first day of the next month following a period of three full calendar months after the deposit.

It is highly likely that the Convention will enter into effect on January 1, 2024, for all Mexican purposes for Mexico's CTAs, this will be confirmed upon the deposit of the ratified instrument. Nonetheless, the entry into effect date of certain CTAs could vary when considering the elections made by other jurisdictions on the MLI's enforcement provisions, specifically with respect to taxes levied without a withholding mechanism. Therefore, assuming Mexico ratifies and deposits the instrument during **October 2022**, the relevant dates would be as follows:

Entry into force ¹	February 2023
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Entry into Effect – Applicable effective

With respect to taxes withheld at source ²	January 2024
With respect to taxes levied by Country ³	January 2024

Mexican tax treaties currently in force and in effect

Signatory jurisdictions with a CTA in force with Mexico					
MLI already ratified & deposited					
In force since			In force since		
1	Australia	1-Jan-19	27	Luxembourg	1-Aug-19
2	Austria	1-Jul-18	28	Malta	1-Apr-19
3	Bahrain	1-Jun-22	29	Netherlands	1-Jul-19
4	Barbados	1-Apr-21	30	New Zealand	1-Oct-18
5	Belgium	1-Oct-19	31	Norway	1-Nov-19
6	Canada	1-Dec-19	32	Panama	1-Mar-21
7	Chile	1-Mar-21	33	Poland	1-Jul-18
8	China	1-Sep-22	34	Portugal	1-Jun-20
9	Costa Rica	1-Jan-21	35	Qatar	1-Apr-20
10	Czech Republic	1-Sep-20	36	Romania	1-Jun-22
11	Denmark	2-Jan-20	37	Russia	1-Oct-19
12	Estonia	1-May-21	38	Saudi Arabia	1-May-20
13	Finland	1-Jun-19	39	Singapore	1-Apr-19
14	France	1-Jan-19	40	Slovak Republic	1-Jan-19
15	Greece	1-Jul-21	41	Spain	1-Jan-22
16	Hong Kong SAR	1-Sep-22	42	Sweden	1-Oct-18
17	Hungary	1-Jul-21	43	Switzerland	1-Dec-19
18	Iceland	1-Jan-20	44	Ukraine	1-Dec-19
19	India	1-Oct-19	45	United Arab Emirates	1-Sep-19
20	Indonesia	1-Aug-20	46	United Kingdom	1-Oct-18
21	Ireland	1-May-19	47	Uruguay	1-Jun-20
22	Israel	1-Jan-19			
23	Japan	1-Jan-19			
24	Korea	1-Sep-20			
25	Latvia	1-Feb-20			
26	Lithuania	1-Jan-19			
Not yet ratified					
48	Argentina				
49	Colombia				
50	Italy				
51	Jamaica				
52	Kuwait				
53	Peru				
54	South Africa				
55	Turkey				
Did not includ MX as CTA					
56	Germany (1-Apr-21)				
Countries with tax treaties in force with Mexico that have not signed the MLI					
57	Brazil				
58	Ecuador				
59	Guatemala *				
60	Philippines				
61	United States				

* Treaty not yet in force.

Let's talk

For a deeper discussion of how the Multilateral Instrument might affect your business, please contact:

International Tax Services, Mexico

Mario Alberto Gutierrez
mario.alberto.gutierrez@pwc.com

Tax and Legal Services, Mexico

Marta Milewska
marta.milewska@pwc.com

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¹ The first day of the month following a period of three complete calendar months after the party deposited its ratification.

² The first day of the next year that begins on or after the latest date of entry into force for each of the jurisdictions.

³ Mexico's election - For taxable periods beginning on or after January 1 of the next year following a six-month period after the latest date of entry into force for each jurisdiction.