Nigeria signed the MLI on 17 August 2017 and has submitted its position which listed treaties with 19 countries for amendment. These include agreements that are already in force and those that are yet to be ratified (e.g. treaties with Korea, Mauritius, United Arab Emirates etc.). This means one can tell the changes that Nigeria plans to make to all of its existing double tax treaties.

Consider this puzzle. It takes 5 machines 5 minutes to manufacture 5 widgets. How many minutes will it take 100 machines to manufacture 100 widgets? If you answered this in a hurry, you probably said 100. This is wrong. The correct answer is 5. But what does this have to do with the Multilateral Instrument (MLI)? I will come back to this in a bit.

When the international community agreed there was a need to fix the international tax rules through the BEPS project, one of the problems they had to address was how to ensure that the recommendations from the project could be quickly implemented by everyone that was involved. Implementing the BEPS recommendations would require countries to make several changes to (a) their local tax legislation; and (b) the avoidance of double taxation agreements (DTA) that they had with other countries. Making changes to DTAs was clearly the more challenging issue because of the time and resources required to do so.

Participants in the BEPS project realized that if the old way of updating DTAs was used to implement the BEPS actions, it would take many years before the BEPS recommendations would become fully effective in most countries. This would defeat the purpose of the project.

The Multilateral Instrument (MLI) was developed to deal with this challenge.

What is the MLI?
In its full form, it is called the OECD’s Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument” or “MLI”).

The MLI is a single agreement between many countries. It allows a country to make concurrent changes to all or some of the DTAs that it has with other countries.

Quick overview of DTAs
Countries that do a lot of trade with one another usually sign agreements for the avoidance of double taxation to ensure that tax, in particular
double taxation, does not become an obstacle to their trade activities. DTAs help to reduce the incidence of double taxation in several ways including: specifying which country has a right to tax a certain type of income, providing for reduced taxes on certain categories of income, etc.

DTAs usually follow a standard template or model. The two most used models are the OECD and UN models developed by the OECD and UN respectively. These models were first developed in the 1920s and are updated from time-to-time to deal with new tax issues. Whenever a model is updated to address a particular tax issue, countries that follow the model try to make the changes to each of their DTAs to ensure that they can also address the issue.

Updating DTAs is not easy

The process of negotiating DTAs and ratifying them into law is usually long and difficult. Even after an agreement has been reached, it can still take many years before it takes full effect. For instance, the DTA between Nigeria and South Africa only came into force in 2008 even though the original agreement was signed in April 2000.

Negotiations for updating DTAs would typically not take as long as the negotiations for new agreements, but they still take a lot of time and resources. As a result of this, many countries do not update their DTAs as often as they should. This means that many DTAs are outdated.

For the BEPS project to be successful it was necessary to overcome this challenge since implementing the recommendations would require each country to update all of its DTAs. If countries followed the old way of having one-on-one negotiations with their existing treaty partners it would take many years for all the negotiations to be concluded and many more years for the agreements to be ratified by each country. Such a delay would defeat the whole purpose of the BEPS project.

How the MLI solves the problem

The MLI removes the need for treaty partners to renegotiate the terms of existing DTAs one after the other making it possible to update the provisions of several double tax treaties with the relevant BEPS updates at the same time. It also makes it possible to pursue the domestication of the changes to all the treaties at once.

This is possible because the changes to be adopted through the MLI were based on collective negotiations between the countries that developed the instrument.

Some of the treaty changes are compulsory (these are the minimum standards) for all parties to the MLI while others are optional. Both the compulsory and optional changes have been standardized. The good thing about this is that the areas that will require one-on-one negotiations are not so many and these negotiations will be limited to choosing between several standardized options.

The process requires each country to submit an MLI position to the OECD. The MLI position is a document that contains details of the changes (based on the provisions of

What has Nigeria done so far?

Nigeria signed the MLI on 17 August 2017. Nigeria has also submitted its MLI position. This means that it is already possible to tell the changes that Nigeria plans to make to all of its existing double tax treaties. In its MLI position, Nigeria listed DTAs with 19 treaty partners for amendment. These include the agreements that are already in force and those that are not yet in force (e.g. DTAs with Korea, Mauritius, United Arab Emirates etc.)

Also, of the 19 agreements, 13 treaty partners (including Belgium, Canada, China, Netherlands, and the United Kingdom) have all listed their DTAs with Nigeria for amendment under the MLI. This means that one can already check what treaty positions match and tell the changes that will likely be made to these DTAs.

The next steps will be for Nigeria and its treaty partners to agree on any parts of their proposals that do not match. Subsequent to this, each partner will then need to undertake the local domestication process to ensure that the changes become law. All of this could happen a lot quicker than we are used to.

Final thoughts

These are some of the changes that taxpayers need to be aware of due to the potential implications for their tax affairs. One of the changes is the introduction of the Principal Purpose Test (PPT) for tackling treaty shopping. Another important one is the amendments to the definition of Permanent Establishments in the treaties.

Nigerian resident taxpayers who currently enjoy treaty benefits should consider how the MLI will affect them. In addition, companies who plan to set up new structures that will allow them get treaty benefits will need to be mindful that the MLI could reduce the effectiveness of those structures.

Although the MLI position submitted by Nigeria on August 17 is provisional and subject to change, there is already a lot that one can deduce about how taxpayers will be impacted when the proposals finally become law.
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