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Global Tax Alert

News from Americas Tax Center

Mexico: Multilateral Instrument submitted to Senate for ratification

Mexico's Interior Ministry submitted the *Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) to the Mexican Senate for ratification, as required under the Mexican Constitution for approval of treaties. Through this process, Mexico continues to move forward with its implementation of the recommendations laid out in the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) action plans.

The MLI was developed as a result of the BEPS initiative. Specifically, Action 15 of the BEPS plan proposed the development of the MLI to modify existing treaties in a faster and more efficient manner, give multinational enterprises greater legal certainty by reducing the number of controversies stemming from the application of international tax law and standardize compliance requirements.

The MLI should allow, to the extent Mexico's treaty partners also sign and ratify the MLI, the bilateral treaties signed by Mexico to be modified without the need to enter into bilateral negotiations to modify each one. This instrument includes, among other things, the modification of the tax treaties' Preamble, a principal-purpose test and diverse provisions to modify and clarify the reach and definition of permanent establishment.

The MLI was signed by Mexico on 7 June 2017, along with 67 other countries. As part of the signing process, Mexico provided a list of treaties to be covered (61), as well as a list of reservations and modifications with respect to the articles of the MLI. The documents presented to the Mexican Senate include a Spanish version of the MLI and the list of Mexico's reservations and modifications, which have changed since the signing ceremony.

The version submitted to the Mexican Senate includes changes in its notices for Articles 3, 9 and 16. A reservation included in the Senate version to not apply Article 3 of the MLI (Transparent Entities) was not in the original document provided by Mexico at the signing ceremony. The version submitted to the Senate also provides that Mexico will opt to apply Article 9(4) of the MLI, which allows for the taxation of capital gains from the transfer of shares or similar interests whose value derived, directly or indirectly at any time during the prior year, more than 50% from real estate in the relevant country. This specific statement to apply the article was not included in the notices by Mexico in 2017. Furthermore, the Senate version of the report does not include a reservation to the second sentence of Article 16(2) related to the Mutual Agreement Procedure.

Regarding entry into force, Article 34 of the MLI provides that, once five countries have ratified the MLI, "the Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by such Signatory of its instrument of ratification, acceptance or approval." For example, if Mexico ratifies the instrument before September 2019, it will enter into force as of 1 January 2020. According to the signatories and parties document published by the OECD, as of 4 December 2018, 85 countries have signed the instrument and 15 countries have ratified it. Many of Mexico's primary treaty partners, including the Netherlands and Luxembourg, have ratified or are also in the process of ratifying the MLI.

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