Executive summary

The Swedish Government has submitted a bill to the Swedish Parliament for approval of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), along with the Government’s positions regarding Sweden’s choices and reservations. The Parliament’s approval is required in order for Sweden to ratify the MLI.

The MLI will enter into force on 1 July 2018 as five jurisdictions have now deposited their instruments of ratification with the Organisation for Economic Co-operation and Development’s depository.1 From a Swedish perspective, however, it is necessary to also amend the laws which have implemented tax treaties into Swedish domestic law, in order for the provisions to become applicable in Sweden. The bill that was submitted to Parliament on 15 March 2018 does not contain any proposed changes to these laws as not all of the relevant jurisdictions have ratified the Convention yet. Instead, the Swedish Government intends to come back to the Parliament regarding the necessary changes concurrently as the relevant jurisdictions ratify the Convention. It is therefore not possible to provide a date for the entry into force of the MLI’s provisions in Sweden.
Detailed discussion

Jurisdictions
Sweden has approximately 80 comprehensive income/capital tax treaties and has notified that it wishes 64 of these to be Covered Tax Agreements (CTAs) under the MLI. As of February 2018, 39 of these countries have correspondingly signed the Convention and listed the agreement with Sweden as a CTA. Accordingly, there are 39 so-called “matching agreements” with the following jurisdictions: Argentina, Armenia, Barbados, Belgium, Bulgaria, Canada, Chile, China, Cyprus, Czech Republic, Egypt, Georgia, Greece, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, the Netherlands, New Zealand, Nigeria, Pakistan, Poland, Romania, Slovakia, South Africa, Tunisia, Turkey and the United Kingdom (UK).

Sweden’s choices and reservations
In the bill presented to the Parliament, the Government proposes that Sweden choose the following provisions:
- Article 6 (Purpose of a Covered Tax Agreement)
- Article 7 (Prevention of Treaty Abuse – Sweden choses to comply with the minimum standard through the Principal Purpose Test)
- Article 16 (Mutual Agreement Procedure)
- Article 17 (Corresponding Adjustments)
- Articles 18-26 (Mandatory Binding Arbitration – see more details below)
- Article 35(7) (Reservation regarding the entry into effect of the provisions of the Convention – Sweden choses to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”).

The Government proposes that Sweden should make reservations with respect to the other provisions of the MLI.

Mandatory binding arbitration
With respect to mandatory binding arbitration, Sweden currently has 13 agreements which are preliminarily covered by the MLI where both jurisdictions have chosen the provisions on arbitration. Sweden has made a reservation on the “final offer” type of arbitration and has chosen to apply the “independent opinion” approach. Out of the 13 countries, 2 have chosen the “final offer” arbitration. In addition, Sweden and Japan have chosen to apply the current arbitration rules in the Sweden-Japan tax treaty instead of the arbitration provisions of the MLI. This means that the arbitration provisions should eventually become applicable in relation to the following 10 countries: Barbados, Belgium, Greece, Ireland, Luxembourg, Malta, Mauritius, the Netherlands, New Zealand and the UK.

Finally, it is of interest to note that Sweden has formulated three reservations. In addition to the two initial reservations under Article 28 of the MLI (regarding dual resident legal entities and cases that the competent authorities agree are not suitable for arbitration), the Government proposes a third reservation regarding so-called “hard-to-value intangibles.” The reservations require acceptance from the other party to the agreement.

Entry into effect
In order for the provisions to enter into force in Sweden, it is necessary to amend the laws through which the Swedish tax treaties have been implemented. The Swedish Government intends to come back to the Parliament regarding the necessary changes concurrently as the relevant jurisdictions ratify the MLI. Therefore, it remains to be seen when the MLI’s provisions will enter into force in Sweden in relation to the “matching agreements.”

Endnotes
1. See EY Global Tax Alert, BEPS Multilateral Convention will enter into force on 1 July 2018 for the first five jurisdictions, dated 23 March 2018.
For additional information with respect to this Alert, please contact the following:

Ernst & Young AB, Stockholm
• Erik Hultman  erik.hultman@se.ey.com
• Rikard Ström  rikard.strom@se.ey.com
• Dunja Edvinsson  dunja.edvinsson@se.ey.com

Ernst & Young LLP, Nordic Tax Desk, New York
• Antoine Van Horen  antoine.vanhoren@ey.com
• Susanne Hamre Skoglund  susanne.skoglund@ey.com
• Nicole Maser  nicole.maser1@ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2018 EYGM Limited.
All Rights Reserved.

EYG no. 02316-181Gbl
1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com