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1 October 2019

Tax Messenger

Tax Edition

The Multilateral Convention on BEPS Implementation is Now in Force

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The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) officially entered into force for Russia on 1 October 2019.

It will be recalled that, under the general rule, the MLI enters into force for a state that has ratified it from the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the instrument of ratification. Since Russia deposited the ratification documents with the OECD Depositary on 18 June 2019, the date of entry into force for Russia falls on 1 October.

Depending on the particular dates of MLI ratification and entry into force for Russia's tax treaty partners, some of the modifications made by the MLI to a number of such treaties will take effect as soon as 1 January 2020.

The entry into force and subsequent application of the MLI could have a major impact in terms of the tax implications for existing business structures both in Russia and abroad and for current or planned cross-border transactions. In particular, key changes will affect:

- withholding tax implications for the payment or receipt of any passive income (dividends, interest, royalties, capital gains, etc.). For example, the MLI requires a principal purpose test to be incorporated into all covered treaties, while a number of treaties will also be updated with additional limitation on benefits rules and criteria for the application of exemptions in the source state of income
- issues surrounding the definition (updated interpretation) of activities giving rise to a permanent establishment. In particular, many tax treaties will be supplemented with anti-fragmentation rules and limitations on exceptions to permanent establishment status (this particularly affects structures for the import of goods into Russia via agents and distributors and with the involvement of subsidiaries)

Since we may expect to see the first effects of these changes in as little as three months' time (starting from 1 January 2020), companies are advised to make a thorough assessment of existing business structures and planned transactions in order to be as well-prepared as possible to deal with potential problems and issues.

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