BEPS: Multilateral Convention Bill (1/2) (3/29/17)

The OECD's[1] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS[2] (the "Convention") was approved on 24 November 2016. As many as 69 countries (including Latvia and Lithuania) signed it on 7 June 2017, with eight countries (including Estonia) having expressed their intention to sign it. Under the Convention, Latvia has opted to apply only provisions for implementing the minimum standard of the action plan on BEPS and to ensure as far as possible that the new provisions complement the existing provisions of the covered tax treaties, or that new provisions not amending the provisions of the covered tax treaties are applied.

Why did Latvia sign the Convention?

As a member of the OECD, Latvia is required to ensure that the minimum standards and recommendations of the BEPS action plan are implemented.

The purpose of the Convention

The Convention is designed to ensure that the following minimum standards and recommendations of the BEPS action plan are implemented with respect to bilateral tax treaties as soon and uniformly as possible:

- Action 2, *Neutralising the Effects of Hybrid Mismatch Arrangements*;
- Action 6, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*;
- Action 7, *Preventing the Artificial Avoidance of Permanent Establishment Status*; and
- Action 14, *More Effective Dispute Resolution Mechanisms*.

When is the Convention applicable?

The main characteristics of the Convention is that it's an instrument existing in parallel and applicable only if both contracting jurisdictions have opted to apply it. And it will not operate in the absence of a tax treaty between any two Convention signatories.

For example, the list of countries Latvia wants to be covered by the Convention includes Azerbaijan, Kazakhstan, Moldova, Montenegro, Qatar, and Ukraine. These countries have yet to sign the Convention, and so the application of provisions selected by Latvia will not begin with any of these countries until they join the Convention.

Accordingly, with respect to Latvia and the other contracting jurisdiction, the provisions of the Convention selected by both signatories will not apply until it has taken effect in both jurisdictions.

Latvia's approach to applying the Convention

Under the Convention, Latvia has opted to apply only provisions for implementing the minimum standard of the BEPS action plan (more details next week) and has named 47 covered tax treaties in its statement to the OECD General Secretariat.

Not all of the countries included in Latvia's statement have joined the Convention and added Latvia to their list of covered tax treaties. Accordingly, the Convention provisions chosen by Latvia and the other signatory will apply to the covered tax treaties Latvia has named with –

1. Austria;
2. Belgium;
3. Bulgaria;
4. Czech Republic;
5. Korea;
6. France;
7. Greece;
8. Georgia;
9. Croatia;
10. Finland;
11. Estonia;
12. India;
13. Ireland;
14. Italy;
15. Iceland;
16. Israel;
17. Canada;
18. Russia;
19. China;
20. United Kingdom;
21. Lithuania;
22. Luxembourg;
23. Malta;
24. Mexico;
25. Netherlands;
26. Norway;
27. Poland;
28. Portugal;
29. Romania;
30. Serbia;
31. Singapore;
32. Slovakia;
33. Slovenia;
34. Spain;
35. Turkey;
36. Hungary;
37. Germany;
38. Sweden;
39. Hong Kong; and
40. Cyprus.

Switzerland is not listed because Latvia and Switzerland began to apply their bilateral tax treaty amended by a protocol from 1 January 2017, which is already implementing the minimum standard of the BEPS action plan.

If a country takes a different approach

If two countries go about applying the minimum standard differently, they should bilaterally agree on an appropriate mechanism for applying the minimum standard, including amendments to the covered tax treaty through bilateral negotiations.

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[1] Organisation for Economic Co-operation and Development

[2] An action plan for addressing base erosion and profit shifting