

MLI Convention

Last Document
Updated **JULY 2020**



SCAN THIS CODE TO CHECK THE LATEST
UPDATE FOR THIS DOCUMENT AND ALL
PUBLISHED DOCUMENTS

1. General

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI") entered into force in the Kingdom on 1 May 2020.

Saudi Arabia signed the MLI on 18 September 2018 and ratified it on 6 November 2019 by the Royal Decree No. M/29, dated 9/3/1441H. It presented the instrument of ratification of the MLI to the OECD Secretariat on 23d January 2020. On the same date, it presented its final MLI positions, including its reservations and notifications of optional provisions.

2. How the MLI works

The MLI is a multilateral treaty that enables jurisdictions to swiftly modify the operation of their tax treaties to implement measures designed to better address multinational tax avoidance and more effectively resolve tax disputes.

Jurisdictions that sign the MLI are required to identify which of their tax treaties they want the MLI to apply to and modify. The tax treaties, which are covered by the MLI, are called 'Covered Tax Agreements' (CTAs).

Both treaty partners need to identify their tax treaty as a CTA in order for that treaty's operation to be modified by the MLI. In the event that only one jurisdiction (or neither jurisdiction) identifies a tax treaty as a CTA, the provisions of that treaty will remain un-modified.

The MLI incorporates flexibility that allows jurisdictions to tailor their adoption to fit their particular circumstances and accommodate unique aspects of their treaty network.

Each jurisdiction is required to notify the OECD Secretariat of its set of provisional choices (referred to as that jurisdiction's 'MLI position') at the time of signature (of the MLI), and confirm them at the time of ratification.

While some MLI articles are mandatory (minimum standards), most are optional. Jurisdictions can choose to adopt the minimum standards only, or they can choose to also adopt some, or all, of the optional articles. If there is a bilateral match, the MLI will modify, but not directly amend, the designated tax treaty articles. Other unrelated parts of the treaty will remain unchanged.

3. Outline of Saudi Arabia's Positions in the Application of the MLI

Saudi Arabia's MLI positions are available on the OECD website (PDF, 73KB)¹.

The summary of features of Saudi Arabia's position choices of application of the MLI with respect to its tax treaties are as follows:

- Article 6 – Purpose of a covered tax agreement (mandatory article)

¹-List of Reservations and Notifications of Saudi Arabia with respect to the MLI [<http://www.oecd.org/tax/treaties/beps-mli-position-saudi-arabia-instrument-deposit.pdf>] (as of January 23, 2020)

MLI Article 6 contains a new treaty preamble text that clarifies that tax treaties are not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance including through treaty-shopping arrangements, MLI Article 6 (1).

The Article also contains optional text, paragraph (3), indicating a desire to further develop economic relationships with other signatories and enhance cooperation in tax matters.

The Kingdom adopted Article 6, including the optional text, paragraph (3).

- **Article 7 – Prevention of treaty abuse (mandatory article)**

MLI Article 7 contains new anti-abuse rules that enable tax administrations to deny treaty benefits in certain circumstances, mainly the Principal Purposes Test ("PPT"). The PPT is the default option that enables jurisdictions to satisfy the BEPS minimum standard.

The Kingdom has adopted the MLI Article 7(1), (PPT).

- **Article 12 – Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies (optional article)**

MLI Article 12 provides that where an intermediary plays the principal role in concluding substantively finalized business contracts in a jurisdiction on behalf of a foreign enterprise, that arrangement will constitute a 'permanent establishment' of the foreign enterprise in that jurisdiction, (MLI Article 12(1)). However, this will not affect the genuine independent agency arrangements that do not constitute "permanent establishment", (MLI Article 12(2)).

The Kingdom has adopted MLI Article 12 entirely.

- **Article 13 – Artificial avoidance of permanent establishment status through the specific activity exemptions (optional article)**

Tax treaties include a list of exceptions to the definition of permanent establishment if a place of business is used solely for specifically listed activities such as warehousing or purchasing goods. Only genuine preparatory or auxiliary activities will be excluded from the definition of permanent establishment. In addition, related entities will be prevented from fragmenting their activities to qualify for this exclusion if the activities constitute complementary functions that are part of a cohesive business operation.

The Kingdom has adopted paragraphs (2) and (4) of Article 13 of the MLI.

- **Article 14 – Splitting-up of contracts (optional article)**

Tax treaties include rules that deem building or construction projects that exceed a specified time period (for example 183 days) to constitute a permanent establishment.

Related entities will be prevented from avoiding the application of the specified time-period by splitting building or construction-related contracts into several parts.

The Kingdom has adopted Article 14.

- **Article 15 – Definition of a person closely related to an enterprise (optional article)**

A ‘person closely related to an enterprise’ is defined for the purpose of establishing whether or not a permanent establishment exists under MLI Articles 12, 13 and 14.

The Kingdom has adopted Article 15.

- **Article 16 – Mutual agreement procedure (mandatory article)**

MLI Article 16 contains new rules that ensure the consistent and proper implementation of tax treaties, including the resolution of disputes regarding their interpretation or application. It provides taxpayers with a more effective tax treaty-based dispute resolution procedure.

The Article includes a minimum standard to allow a taxpayer to present a case to the competent authority of either Contracting Jurisdiction, (MLI Article 16(1), first sentence).

The Kingdom has adopted Article 16, paragraph 1 and some other provisions from Article 16 with respect to a small number of covered tax agreements.

- **Article 17 – Corresponding adjustments (mandatory article)**

Transfer pricing adjustments can result in double taxation when one jurisdiction makes an adjustment to an entity’s profits and the other jurisdiction does not make a compensating adjustment to the profits of the relevant related entity.

Under Article 9(2) of most tax agreements, a jurisdiction will be required to make a downward adjustment to the profits of a resident entity, as a result of an upward adjustment by the other jurisdiction to the profits of an associated entity which is a resident of that other jurisdiction (provided both jurisdictions agree that the upward adjustment is justified). MLI Article 17 provides more certainty to taxpayers as to the possibility of making such an adjustment.

The Kingdom has adopted MLI Article 17.

4. The entry into force and the effective dates of MLI modifications

As indicated above, the MLI entered into force in the Kingdom on 1 May 2020. However, the extent to which the MLI will modify the operation of the Kingdom’s tax treaties will depend on the adoption positions taken by each jurisdiction at ratification, acceptance, or approval of the MLI.

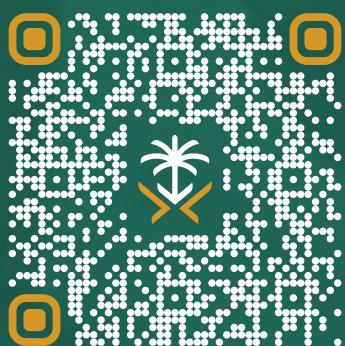
The date of entry into effect for each of the Kingdom’s tax treaties modified by the MLI depends on the actions of the treaty partner jurisdiction, specifically when the MLI has been ratified, accepted, or approved for the treaty partner’s domestic purposes and when the relevant notifications have been deposited with the OECD.

Subject to the above-mentioned protocols, the earliest the MLI takes effect in the Kingdom is as follows:

- for withholding taxes on income derived on or after 1 January 2021;
- for all other taxes, for income years starting on or after 1 November 2020; and
- for dispute resolution (mutual agreement procedure), generally on or after 1 May 2020.

5. Development of Synthesized Texts

To facilitate the interpretation and application of the Kingdom's tax treaties that are modified by the MLI, GAZT is developing synthesised texts of the treaties, as modified by the MLI, to be published on its website. However, the synthesized text itself does not constitute a source of law. The authentic texts of the treaties and the MLI are the only legal texts applicable.



SCAN THIS CODE TO CHECK THE LATEST
UPDATE FOR THIS DOCUMENT AND ALL
PUBLISHED DOCUMENTS

OR PLEASE VISIT OUR WEBSITE

gazt.gov.sa