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Multilateral instrument

Base Erosion and Profit Shifting ("BEPS") refers to harmful tax planning strategies. There is an annual loss between 100 and 240 billion dollars due to BEPS on worldwide corporate tax revenue based on OECD statistics. Working together in the OECD/G20 BEPS Project, over 60 countries jointly developed 15 actions to tackle tax avoidance and to ensure a more transparent tax environment. The MLI, a reflection of BEPS Action numbered 15, helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in the existing bilateral tax treaties.

Abuse of tax treaties is an important reason of BEPS. Countries that are parties to the MLI will be able to modify their Covered Tax Treaties where MLI provisions are agreed by the both parties of the tax treaty. The MLI is an instrument which helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing bilateral tax treaties. These measures aim to prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralize the effects of hybrid mismatch arrangements.

Rather than being a protocol that directly amends the text of the current tax treaties, the MLI modifies "Covered Tax Agreement" of the signatories. A Covered Tax Agreement is a tax treaty which is in force between the parties to the MLI and for which both parties have made a notification that they wish to modify the agreement using the MLI. The OECD will make available to the public lists of modified tax treaties and all relevant information on effects of the MLI provisions.

In the application of MLI provisions to Covered Tax Agreement, a provision of MLI will not be in force if one of the contracting states of a tax treaty uses reservation to opt out that provision. A party could both use reservation to opt out a provision for all its Covered Tax Agreements or specific ones.

The timing of entry into effect of the modifications is linked to the completion of the ratification procedures in the jurisdictions that are parties to the Covered Tax Agreement. The signatories will inform the OECD of the completion of their ratification procedures. The OECD will be tracking ratification procedures completed by the MLI signatories and publish the relevant information.

The text of the MLI was published on 13 November 2016. The MLI opened to the signature according to Article 27 of the Agreement and on 7 June 2017, signing ceremony of the MLI was held in Paris. The MLI was signed by 94 countries including Turkey at the ceremony and afterwards.

Turkey opted to notify all its tax treaties as Covered Tax Agreements. While MLI was signed by Turkey, approval process has not been completed yet in terms of Turkish domestic law for the amendments to be effective. Consequently, the MLI has no effect on Covered Tax Agreements determined by Turkey yet.

Following Turkey's signing of the OECD Multilateral Convention (MLI) on 7 June 2017, the government released its provisional list of reservations and notifications as below:

The listed reservations are:

- Article 4 (Dual Resident Entities)
- Article 5 (Application of Methods for Elimination of Double Taxation)
- Article 8 (Dividend Transfer Transactions)
- Article 9 – 9(1) (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property)
- Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions)
- Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents)
- Article 14 (Splitting-up of Contracts)
- Article 17 (Corresponding Adjustments)

The notifications relate to the following articles:

- Article 6 (Purpose of a Covered Tax Agreement)
- Article 7 (Prevention of Treaty Abuse)
- Article 9 - 9(4) (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property)
- Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies)
- Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions)
- Article 16 (Mutual Agreement Procedure)

Number of the MLI signatory jurisdictions are gradually increasing. Signatory jurisdictions notify their lists of reservations and notifications to the OCD. As mentioned above, Turkey used reservation for 9 of the MLI provisions and notified OECD that it wished to apply 6 of the MLI provisions for its Covered Tax Agreements.

Although the MLI is not yet in force for Turkey due to the fact that the ratification process of the MLI is not yet completed, it contains notable changes to Covered Tax Agreements. The MLI, which is a direct reflection of BEPS Action 15, is an indicator showing to which extent Turkey applies decisions and standards set by the OECD under BEPS Project.