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MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY (‘MLI) RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (‘BEPS’) ACTION PLAN HAS BEEN SUBMITTED TO TURKISH PARLIAMENT FOR RATIFICATION

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MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY ('MLI') RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING ('BEPS') ACTION PLAN HAS BEEN INTRODUCED TO PARLIAMENT FOR RATIFICATION

Multilateral Convention ("Multilateral Tax Instrument"," MLI") to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("BEPS") was signed by 68 countries including Turkey on June 7, 2017 in Paris. Following the ratification of the agreement by law, the Convention will enter into force separately for all the signatory countries including Turkey.

It is targeted to enact amendments in bilateral double tax treaties without leading to any decrease in revenues of Turkish Treasury. On the other hand, tax treaties are aimed to be aligned to international standards.

As known, Turkey has been making serious efforts to bring its domestic legislation on the ratification of MLI eventuated on 3rd of June, 2020 as draft ratification law was approved on the Plan and Budget Commission of Grand National Assembly of Turkey including all statements and reservations made by Turkey. Currently, the draft law has been sent to Chairman of the Parliament for its submission to the agenda.

In our International Tax bulletin, we will analyze MLI within its main framework and its potential impacts along with its proposed date of enforcement and our assessments:

1. Multilateral Tax Instrument

The MLI is one of the 15 Actions from the OECD BEPS action plan. It enables quick and consistent implementation of the tax treaty recommendations that follow from the BEPS project, namely hybrid mismatches (Action 2), tax treaty abuse (Action 6), permanent establishments (Action 7) and dispute resolution (Action 14).

The MLI will apply alongside a tax treaty and modify its application by allowing participating jurisdictions to adopt the BEPS recommendations without having to renegotiate each relevant treaty.

In November 2016, over 100 jurisdictions concluded negotiations on the Multilateral Convention to Implement Tax Treaty Related Measures to prevent BEPS that will swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. The MLI already covers 94 jurisdictions and entered into force on 1 July 2018. Signatories include jurisdictions from all continents and all levels of development and other jurisdictions are also actively working towards signature.

The seeds of a multilateral tax agreement were planted with the BEPS 15th Action Plan draft report and the final report was published on 5 October 2015. Multilateral Tax Treaty was signed in Paris by several countries including Turkey on 7th of June 2017 pursuant to the calendar.

2. The Effects of MLI

MLI does not have the effect of cancelling the current or potential Tax Treaties between the countries. Jurisdictions will continue to conclude tax treaties on a bilateral basis. The MLI only modifies existing bilateral agreements. It is expected that jurisdictions will include treaty related BEPS measures in future bilateral tax treaties.

The MLI is a flexible instrument which will modify tax treaties according to a jurisdiction's policy preferences with respect to the implementation of the tax treaty-related BEPS measures.

Signatory countries have the right not to apply (reservations) some provisions other than those including minimum standards. The reservations made by the signatory country are implemented symmetrically. Accordingly, the reservation made by a signatory country with a clause will be applied in all bilateral Tax Treaties signed by the signatory country, regardless of whether other signatory countries put a reservation on the same subject.

3. Application and Effective Date of MLI in Turkey

The MLI became effective after the first five countries (Republic of Austria, Man Island, Jersey, Poland, Slovenia) approve it as per their domestic legal procedures, as per Article 34 of the MLI. For these countries, the MLI became effective three months after the approval process is complete in all five countries. For all other countries, it will become effective three months after the approval process is complete in line with domestic law.

Therefore, In Turkey, MLI provisions will become effective after 3 months from the date that the draft ratification law approved and published on the Official Gazette.

4. Our Evaluations

The MLI will affect more than 3,000 tax treaties, and it is therefore critical for multinational enterprises and private equity funds to analyze and understand how the MLI will impact cross-border dividend, interest, and royalty transactions, and existing business operations.

Signatory countries choose which of the Multilateral Tax Treaty articles will be implemented and which Tax Treaties will be covered by the MLI. They even propose their preferences to other contracting countries. Since only 'matching' (mutually agreed) arrangements will be implemented, the alteration of a provision made by one state is only possible with other country's approval.

MLI was created as a result of a negotiation with the participation of 100 different countries and is expected to have an impact on approximately one-third of the Tax Treaties in effect globally.

MLI will affect multinational companies and the applicable Tax Treaties, along with current developments in international tax law. According to the Article 34 of MLI, Multilateral Tax Treaty together with declarations and reservations made by Turkey will enter into force on the first day of the following month after the draft ratification law will be enacted by the Parliament and published on the Official Gazette.

Therefore, MLI should be discussed in detail because of its unique nature in the context of its modifications to the applications between Turkey and other signatory countries. We strongly recommend that multinational companies and Turkish companies having outbound investments to start dealing with the details of this new regulation within the shortest timeframe. In this context, please click to read the text of the agreement submitted to the parliament.

Kind Regards,

Please contact us for the further details on our international tax bulletin

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