

TECHNICAL - DIRECT TAXATION

e-CTIM TECH-DT 30/2021

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Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting – Update for Malaysia

Malaysia has deposited the instrument of ratification on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) on 18 February 2021 with the Organisation for Economic Co-operation and Development (“OECD”) Depository. The MLI will enter into force in respect of Malaysia on 1 June 2021.

The MLI contains both minimum standard and optional provisions as per the Schedule in the Double Taxation Relief (MLI) Order 2020 [P.U. (A) 224/2020]. Malaysia has provided its positions on the minimum standard and optional provisions as set-out in the Inland Revenue Board of Malaysia’s (“LHDNM’s”) webpage on the MLI and a list of its reservations and notifications [including notification of 73 Double Tax Agreements (“DTAs”) covered by the MLI].

The MLI will modify Malaysia's DTAs if Malaysia and its treaty partner share the same position on the provisions of the MLI. The extent to which MLI provisions are incorporated into Malaysia's DTAs will depend on the final positions at the time of ratification of MLI of both Malaysia and its treaty partner.

Generally, pursuant to Article 35(1) of the MLI, the MLI provisions [other than the provisions of Part VI (Arbitration) with respect to cases presented to the competent authority of a Contracting State] shall have effect in each of the Contracting States with respect to the DTAs covered by the MLI with respect to -

- a - Withholding taxes (“WHT”) - where the event giving rise to the WHT occurs on or after first day of the next calendar year that begins on or after the latest of the dates on which the MLI enters into force for each of the Contracting States of the DTAs; and
- b - All other taxes levied - for taxes levied with respect to taxable periods beginning on or after the expiration of a period of 6 calendar months (or a shorter period if all Contracting States notify the OECD Depository that they intend to apply such shorter period) from the latest of the dates on which the MLI enters into force for each of the Contracting States of the DTAs.

References

- 1 - LHDNM’s [webpage](#) on the MLI – Malaysia’s position;
- 2 - [Double Taxation Relief \(MLI\) Order 2020 \[P.U. \(A\) 224/2020\]](#) gazetted on 4 August 2020 (see our [e-CTIM TECH-DT 73/2020](#));
- 3 - [OECD - Signatories and Parties to the MLI – Malaysia’s status as at 18 February 2021](#); and
- 4 - [OECD - List of reservations and notifications \(including notification of 73 DTAs covered by the MLI\) made by Malaysia upon deposit of the instrument of ratification on the MLI on 18 February 2021](#).

You may write to the Institute at technical@ctim.org.my in respect of any suggestions, concern or comments you may have on the above.

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