Tax Policy Alert

Nine countries sign Subject to Tax Rule MLI

20 September 2024

In brief

What happened?

The OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) convened a signing ceremony for the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI). For further details on the STTR and the STTR MLI, see our previous tax policy alerts of 5 October 2023 and 19 July 2023.

On 19 September 2024, nine jurisdictions signed the STTR MLI and another ten jurisdictions expressed their intent to sign. The OECD press release noted that 38 additional jurisdictions 'participated' in the signing ceremony - but without making specific commitments.

Why is it relevant?

The Pillar Two STTR allows source countries to impose an additional tax liability on certain intra-group payments where the recipient is subject to a nominal corporate tax rate of less than 9%. The provision was specifically designed to help developing countries protect their tax base and is an integral part of the Pillar Two consensus.

In detail

The Pillar Two STTR was designed to be incorporated into bilateral tax treaties between IF members that are developing countries and other IF members that apply nominal corporate income tax rates below the STTR minimum rate of 9%. In particular, IF members committed to accept the incorporation of the Pillar Two STTR into tax treaties when requested to do so by developing countries.

This political commitment is now implemented by an elective STTR MLI, which is meant to operationalize the incorporation of this provision into the relevant bilateral tax treaties. More specifically, the Pillar Two STTR would be implemented into 'Covered Tax Agreements' listed by the 'Parties' to the STTR MLI.

Observation: The list of 19 jurisdictions that signed or expressed intention to sign the STTR MLI is quite limited, and the complexity of the provision remarkably high. This raises the question whether the STTR will be effective in achieving its objective of supporting developing jurisdictions to protect their tax base.

Observation: The United Nations Committee of Experts recently approved its own STTR, with a broader scope. Additionally, developing countries are currently engaged in the negotiation of a Framework Convention on International Tax Cooperation at the United Nations (see our previous tax policy alert of 11 June 2024). Overall, it is possible that the limited list of signatories to the STTR MLI reflects a degree of reluctance to sign in the face of competing international tax fora, or a preference for the 'UN STTR.'

The STTR MLI remains open for signature for other IF members. After signature, countries still need to ratify the Convention locally before it can enter into force.

Let's talk

For a deeper discussion of how the Pillar Two STTR might affect your business, please contact:

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