TAX ALERT

Mongolia • No 08/2024 • November 2024

Upcoming Changes to Mongolian Double Tax Treaties Effective from 2025

1. Introduction about the Multilateral Instrument (MLI) and Mongolian implementation

The MLI, formally known as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), serves as a versatile tool for amending tax treaties in alignment with a country's tax policies to implement BEPS measures.

Specifically, MLI is an international agreement developed by the Organisation for Economic Co-operation and Development (OECD)

As indicated in the timeline below, from joining to the entry into force, the MLI for Mongolia will become effective on January 1, 2025.

October 6th
Mongolia became the 100th jurisdiction to join the BEPS Convention (by signing the MLI).
2022

June 5th
The Parliament of Mongolia ratified the MLI as an international treaty.
2024

Sept 30th
Mongolia deposited its ratification instrument for the MLI.
2024

January 1st
The BEPS Convention will enter into force for Mongolia.
2025

This Tax Alert aims to provide a brief overview of the provisions included in the MLI, Mongolia's selected positions for the MLI, and their potential implications. Please refer to our tax alert issued when Mongolia joined the MLI by clicking here.

2. Mongolian DTTs are planned be modified under the MLI

Mongolia has included all its effective DTTs as Covered Tax Agreements (CTAs) under the MLI. However, some of the DTT partners have either not joined the MLI or have not listed the Mongolian DTT as a CTA in their MLIs. Consequently, it is anticipated that **19** DTTs (highlighted in the table below) of Mongolia are expected to be modified under the MLI starting from 2025.

№	Country Name	MLI Signed Date/Status	MLI Effective Date	Included in Mongolian DTT its CTA
1	**Austria**	**2017.06.07**	**2018.07.01**	**Yes**
2	Belarus	Not Joined	N/A	N/A
3	**Belgium**	**2017.06.07**	**2019.06.26**	**Yes**
4	**Bulgaria**	**2017.06.07**	**2023.01.01**	**Yes**
5	**Canada**	**2017.06.07**	**2019.08.29**	**Yes**
6	**China**	**2017.06.07**	**2022.09.01**	**Yes**
7	**Czech**	**2017.06.07**	**2020.09.01**	**Yes**
8	**France**	**2017.06.07**	**2019.01.01**	**Yes**
9	Germany	2017.06.07	2021.01.07	No
10	Hungary	2017.06.07	2021.03.25	No
11	**India**	**2017.06.07**	**2021.01.10**	**Yes**
12	**Indonesia**	**2017.06.07**	**2020.04.28**	**Yes**
13	**Italy**	**2017.06.07**	**2020.04.28**	**Yes**

№	Country Name	MLI Signed Date/Status	MLI Effective Date	Included in Mongolian DTT its CTA
14	**Kazakhstan**	**2018.06.25**	**2020.10.01**	**Yes**
15	Kyrgyz	Not Joined	N/A	N/A
16	**Malaysia**	**2018.01.24**	**2021.02.18**	**Yes**
17	North Korea	Not Joined	N/A	N/A
18	**Poland**	**2017.06.07**	**2018.01.23**	**Yes**
19	**Russia**	**2017.06.07**	**2019.10.01**	**Yes**
20	**Singapore**	**2017.06.07**	**2018.12.21**	**Yes**
21	**South Korea**	**2017.06.07**	**2020.09.07**	**Yes**
22	Swiss	2017.06.07	2019.12.01	No
23	**Turkey**	**2017.06.07**	**2018.01.01**	**Yes**
24	**Ukraine**	**2018.07.23**	**2019.08.08**	**Yes**
25	**United Kingdom**	**2017.06.07**	**2018.10.01**	**Yes**
26	Vietnam	Not Joined	N/A	N/A

This Alert is produced by PwC Tax TMZ. The material contained in this alert is provided for general information purpose only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

© 2024 PricewaterhouseCoopers Tax TMZ. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Tax TMZ, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.

Upcoming Changes to Mongolian Double Tax Treaties Effective from 2025

Contact us

Sergi Kobakhidze
Partner
Tax and Legal Services
sergi.kobakhidze@pwc.com

Tsendmaa Choijamts
Executive Director
Tax and Legal Services
tsendmaa.choijamts@pwc.com

Enkhzul Jambal
Tax Senior Manager
Tax Consulting Services
enkhzul.jambal@pwc.com

Enkhsanaa Erdene-Ochir
Tax Manager
Tax Consulting Services
enkhsanaa.erdene-ochir@pwc.com

PwC Tax TMZ

Central Tower, 6th floor
Suite 601, Ulaanbaatar
14200, Mongolia
Tel : + 976 70009089
Fax : +976 11 322068
www.pwc.com/mn

3. Adopted Positions of Mongolia on MLI Articles and Their Implications for Current DTTs

The MLI comprises 39 Articles designed to implement measures outlined in Actions 2, 6, 7, and 14 of the BEPS Project. These measures address some critical BEPS issues such as hybrid mismatches, treaty abuse, artificial avoidance of permanent establishment (PE) status, and the resolution of international tax disputes.

The table below outlines some of the Mongolia's adopted positions regarding the key Articles of the MLI and their potential implications for existing DTTs). The extent of modifications to each DTT will largely depend on the selected positions of both parties involved. Therefore, to determine the precise modifications to a specific DTT (e.g., the DTT between China and Mongolia) effective from 2025 under the MLI, it is essential to cross-check and analyze the selected positions of both parties (e.g., Mongolia and China).

Name of MLI Articles	Article Number	Possible implications for the DTT application
Dual Resident Entities	Article 4	Treaty residency will be determined by a mutual agreement procedure (MAP) if a taxpayer meets the tax residency requirements of both countries. Without a successful MAP, a dual resident entity is not entitled to treaty benefits.
Purpose of a Covered Tax Agreement	Article 6	New preamble text will be added to the DTT to express its intention to eliminate double taxation and reduce tax evasion or avoidance.
Preventing Treaty Abuse (PPT)	Article 7(4)	Specific anti-abuse rules with objective criteria for qualifying for treaty benefits will be added to the DTT, ensuring only genuine residents can access the benefits.
Preventing Treaty Abuse (Simplified LOB)	Article 7(7)(a)	A broader and more flexible anti-abuse rule will be added to the DTTs, allowing tax authorities to deny treaty benefits if one of the principal purposes of a transaction or arrangement was to obtain those benefits.
Dividend Transfer Transactions	Article 8	Anti-abuse rules, such as a minimum holding period for dividend transfer benefits, will be added to the DTTs.
Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Article 9(4)	An anti-abuse rule for capital gains from the sale of shares in entities principally deriving value from immovable property, including mining or land rights, will be added to the DTTs.
Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	Article 11(2)	A 'saving clause' will be added to the DTT to clarify that it does not restrict a jurisdiction's right to tax its own residents, except with respect to certain treaty provisions.
Avoidance of PE Status through Specific Activity Exemptions	Article 13	Provisions will be added to the DTT to clarify that the activities should only fall outside the definition of a PE of they are 'of a preparatory or auxiliary character'.

Takeaway and what we can offer:

The adoption of the MLI will significantly impact DTT applications. In light of these anticipated changes, taxpayers should review their international operational, financial, and holding structures, arrangements, and transactions in advance to prepare for the new rules.

If you need advice on the above topic or any other issues, please contact us.

We are happy to assist you in assessing the impact of the MLI on your business.

This Alert is produced by PwC Tax TMZ. The material contained in this alert is provided for general information purpose only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

© 2024 PricewaterhouseCoopers Tax TMZ. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Tax TMZ, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.