



Taxavvy

1 March 2021 | Issue 5-2021

Malaysia deposits instrument of ratification for BEPS Multilateral Convention

www.pwc.com/my/tax

Malaysia deposits instrument of ratification for BEPS Multilateral Convention

Malaysia has deposited the instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) with the OECD on 18 February 2021.

Arising from the deposit of the MLI, the MLI will now enter into force for Malaysia on 1 June 2021. The effective date of the relevant provision under the MLI is subject to the date of deposit of the MLI instrument of the respective DTA partners.

Entry into force

The MLI will enter into force for Malaysia on **1 June 2021** (the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the instrument of ratification with the OECD).

Entry into effect

The effective dates of the MLI provisions for Malaysian double tax agreements (DTA) which are covered under the MLI are generally as follows:

- Withholding taxes: 1st January of the next calendar year after the DTA is modified by the MLI.
- Other taxes: Taxable periods beginning on or after the expiration of a period of six calendar months after the DTA is modified by the MLI.

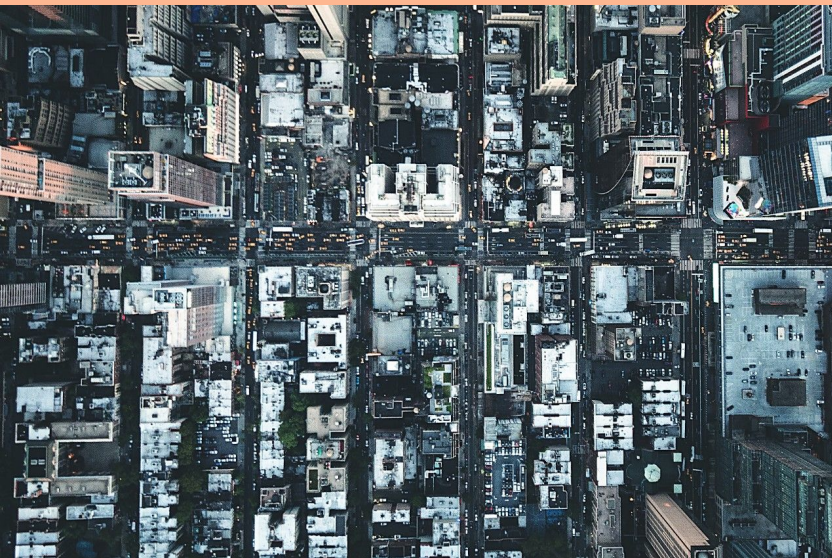
The “modification date” generally refers to the later of 1 June 2021 and the date on which the MLI enters into force for the other DTA partner. Examples of the determination of effective dates for some key Malaysian DTAs covered under the MLI is provided in the following pages.

Key MLI provisions applicable to Malaysian DTAs

Malaysia’s final choice of optional provisions under the MLI is consistent with the provisional choices indicated at the time of signing of the MLI. The key mandatory and optional provisions of the MLI impacting Malaysia are as follows:

- Artificial avoidance of permanent establishment status
- Prevention of treaty abuse
- Mutual agreement procedures
- Corresponding adjustments
- Transparent entities

Please refer to [TaXavvy Issue 47/2020](#) for more information on these provisions.



Examples of date of entry into effect for some key Malaysian DTAs covered under the MLI

MLI Signatory	Date of deposit of MLI	Date of entry into force of MLI	Modification date of DTA between Malaysia and the MLI Signatory	Date of entry into effect for WHT under the modified DTA between Malaysia and the MLI Signatory	Date of entry into effect for other taxes under the modified DTA between Malaysia and the MLI Signatory
		(1st day of the month following the end of 3 months from date of deposit of MLI with OECD)	(the <u>later</u> of 1 June 2021 and the date on which the MLI enters into force for the other MLI Signatory)	(1st January of the next calendar year after a bilateral treaty is modified by the MLI)	(Taxable periods beginning on or after the end of 6 months after a bilateral treaty is modified by the MLI)
Malaysia	18 Feb 2021	1 June 2021			
Australia	26 Sep 2018	1 Jan 2019	1 June 2021	1 Jan 2022	1 Dec 2021
China	Pending	Pending deposit of MLI by China	Pending (Date of entry into force for China will be the later of the 2 dates)	Pending (1st January of the calendar year after the date of entry into force for China)	Pending (taxable periods beginning on or after the end of 6 months after the date of entry into force for China)
India	25 June 2019	1 Oct 2019	1 June 2021	1 Jan 2022	1 Dec 2021
Ireland	29 Jan 2019	1 May 2019	1 June 2021	1 Jan 2022	1 Dec 2021
Japan	26 Sep 2018	1 Jan 2019	1 June 2021	1 Jan 2022	1 Dec 2021

Examples of date of entry into effect for some key Malaysian DTAs covered under the MLI (cont'd)

MLI Signatory	Date of deposit of MLI	Date of entry into force of MLI	Modification date of DTA between Malaysia and the MLI Signatory	Date of entry into effect for WHT under the modified DTA between Malaysia and the MLI Signatory	Date of entry into effect for other taxes under the modified DTA between Malaysia and the MLI Signatory
		(1st day of the month following the end of 3 months from date of deposit of MLI with OECD)	(the <u>later</u> of 1 June 2021 and the date on which the MLI enters into force for the other MLI Signatory)	(1st January of the next calendar year after a bilateral treaty is modified by the MLI)	(Taxable periods beginning on or after the end of 6 months after a bilateral treaty is modified by the MLI)
Malaysia	18 Feb 2021	1 June 2021			
Pakistan	18 Dec 2020	1 Apr 2021	1 June 2021	1 Jan 2022	1 Dec 2021
Singapore	21 Dec 2018	1 Apr 2019	1 June 2021	1 Jan 2022	1 Dec 2021
United Kingdom	29 June 2018	1 Oct 2018	1 June 2021	1 Jan 2022	1 Dec 2021

The list of MLI signatories including their respective date of entry into force and choice of optional provisions can be found at the OECD's website at <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beeps.htm>

Next steps

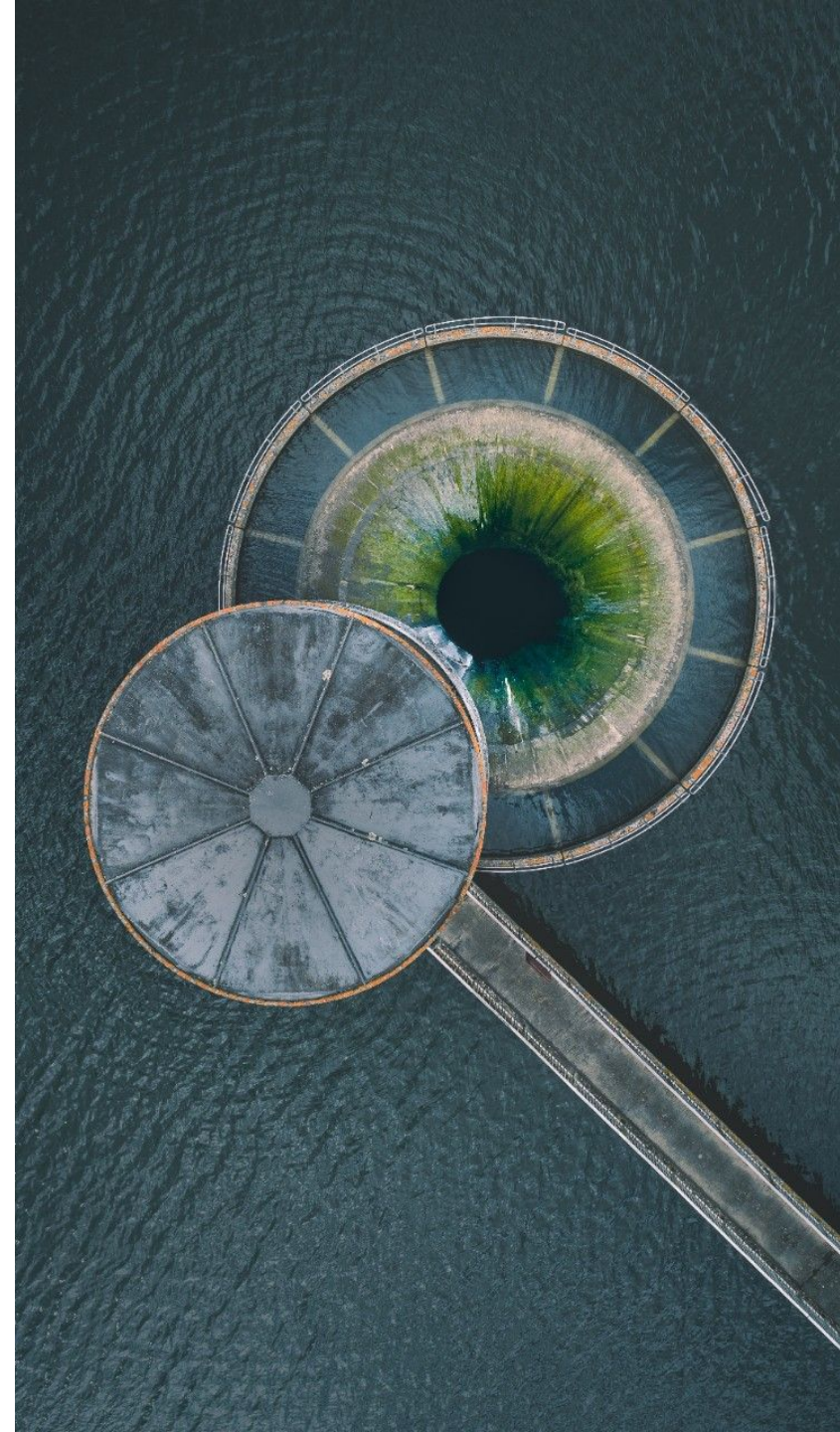
In view of the effective dates of the MLI of 1 December 2021 and 1 January 2022, multinational groups of companies (MNCs) should start to consider the following:

Review existing business structure and operating model in light of the changes introduced by the MLI

Review existing arrangements with agents who conduct in-country activities on behalf of a principal entity

Review existing activities which constitute preparatory and auxiliary activities based on the permanent establishment definitions under the DTAs before modification by the MLI, taking into account the overall activities of entities within the group

MNCs resident in countries which do not have a DTA with Malaysia should consider the Place of Business rules under Section 12 of the Income Tax Act 1967, as the IRB broadly adopts provisions which are equivalent to the PE rules under the MLI as illustrated in the IRB's Guidelines on the Application of Subsections 12(3) and 12(4) of the Income Tax Act 1967 in Determining a "Place of Business" (refer to [TaXavvy Issue 38-2020](#)).



Connect with us

Kuala Lumpur

Jagdev Singh
jagdev.singh@pwc.com
+60(3) 2173 1469

Penang & Ipoh

Tony Chua
tony.chua@pwc.com
+60(4) 238 9118

Melaka

Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Tan Hwa Yin

hwa.yin.tan@pwc.com
+60(6) 270 7300

Johor Bahru

Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Kuching

Lee Yuien Siang
yuien.siang.lee@pwc.com
+60(3) 2173 1333

Cynthia Ng

cynthia.hh.ng@pwc.com
+60(3) 2173 1438

Labuan

Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services

Margaret Lee
margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia

steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Specialist services

Corporate Services

Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Dispute Resolution

Tai Weng Hoe
weng.hoe.tai@pwc.com
+60(3) 2173 1600

Global Mobility Services

Sakaya Johns Rani
sakaya.johns.rani@pwc.com
+60(3) 2173 1553

Hilda Liow

hilda.liow.wun.chee@pwc.com
+60(3) 2173 1638

Emerging Markets

Fung Mei Lin
mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining

Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Indirect Tax

Raja Kumaran
raja.kumaran@pwc.com
+60(3) 2173 1701

Yap Lai Han

lai.han.yap@pwc.com
+60(3) 2173 1491

Chan Wai Choong

wai.choong.chan@pwc.com
+60(3) 2173 3100

International Tax Services / Mergers and Acquisition

Gan Pei Tze
pei.tze.gan@pwc.com
+60(3) 2173 3297

Financial Services

Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Services & Infrastructure

Lim Phaik Hoon
phaik.hoon.lim@pwc.com
+60(3) 2173 1535

People & Organisation

Kartina Abdul Latif
kartina.a.latif@pwc.com
+60(3) 2173 0153

Lee Shuk Yee

shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Tax Technology

Yap Sau Shiung
sau.shiung.yap@pwc.com
+60(3) 2173 1555

Tax Reporting & Strategy

Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Technology, Media, and Telecommunications

Heather Khoo
heather.khoo@pwc.com
+60(3) 2173 1636

Transfer Pricing

Anushia Soosaipillai
anushia.joan.soosaipillai@pwc.com
+60(3) 2173 1419

China Desk

Lorraine Yeoh
lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japanese Business Consulting

Yuichi Sugiyama
yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap

clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446



www.pwc.com/my/tax

TaXavvy is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2021 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see www.pwc.com/structure for further details.