

Greece signed MLI to adopt minimum standard provisions of the OECD BEPS package

Greece was among the sixty-eight adopters of the Multilateral Instrument (MLI)¹, who participated in the signing ceremony that took place in Paris on 7 June 2017. Greece has generally taken a mainstream approach by adopting minimum standard provisions to combat treaty abuse and to improve the efficiency of cross-border dispute resolution, while notifying of the intention to apply the MLI provisions with respect to all double taxation treaties currently in force with other OECD member states. On the other hand, Greece has opted out of the provisions concerning hybrid mismatches (art. 3-5) and the artificial avoidance of PE status (art. 12-15).

Ratification of the MLI is the next step prior to entering into a new era in the field of international taxation. Overall, the success of the MLI will depend on how many countries finally sign up for the instrument and how many “matches” can be ultimately made. To be noted that the United States have not indicated an intention to sign in. Will the goal of effectively preventing cross-border tax avoidance be achieved, without leading to increased double taxation, uncertainty and eventually a negative impact on cross-border business activity? It remains to be seen.

A summary of the list of reservations and notifications made by Greece on the MLI is presented below.

Covered Tax Agreements (art. 2)

Greece has notified its intention that all agreements for the avoidance of double taxation currently in force between Greece and other jurisdictions be covered by the MLI (“Covered Agreements”).

Hybrid Mismatches (art. 3-5)²

Greece has reserved the right not to apply relevant provisions in the context of its Covered Agreements.

¹ In Greek “Πολυμερής Σύμβαση για την Αποφυγή Διπλής Φορολογίας”

² Part II of the MLI (art. 3-5) introduces provisions covering hybrid mismatches leading to double non-taxation, namely, provisions on transparent entities, dual resident entities and elimination of double taxation.

Purpose of Covered Tax Agreement (art. 6)

Greece has notified that all the Covered Agreements with the exception of the Agreement with Romania, include language that is compliant with the minimum standard of intending to eliminate double taxation, without creating opportunities for non-taxation. Furthermore, Greece has opted to change the preamble language of the Covered Agreements, so as to include wording referring to the desire to develop an economic relationship with contracting states and to enhance its co-operation with such states in tax matters.

Prevention of Treaty Abuse (art. 7)

By entering into the MLI, Greece intends to adopt the Principal Purpose Test (PPT), as set out in article 7 par. 1 of the MLI. Greece has explicitly opted out of the Simplified Limitation of Benefits Clause. Furthermore, Greece has notified that the PPT clause set out in article 7 par. 1 of the MLI should substitute similar provisions included in specific Covered Agreements, namely with Austria, Belgium, Iceland, Mexico, Poland and Portugal.

Dividend Transfer transactions (art. 8)

Greece has reserved the right not to apply the relevant provision in the context of its Covered Agreements.

Capital gains from the alienation of shares or interests of entities deriving their value principally from immovable property (art. 9)

Greece has also opted for the application of article 9 par. 1 of the MLI, which updates the special anti-abuse clause incorporated in specific Covered Tax Agreements in relation to the right to tax capital gains earned from the alienation of shares or interests of entities deriving their value principally from immovable property situated in one contracting state (property rich companies). In particular, article 9 par. 1:

- (i) introduces a 365-day testing period for determining whether the shares derive their value principally from immovable property and
- (ii) expands the scope of the provision to include the alienation of interests comparable to shares, such as interests in a partnership/trust deriving principally their value from immovable property.

PE status (art. 10-15)

Greece has reserved the right not to apply the set of provisions relevant to PE status in its Covered Agreements³.

Improving Dispute Resolution (art. 16-26)

Following the BEPS Action 14 minimum standard, Greece has adopted part V of the MLI on the Mutual Agreement Procedure (MAP). Greece has made notifications on a number of matters, including the Covered Agreements that contain provisions indicating a time frame for referring a double taxation case to the competent authorities, shorter than three years from the first notification of the relevant action, the Covered Agreements that do not contain any provision on MAP and the Covered Agreements that do not contain a provision that any agreement reached under a MAP shall be implemented, notwithstanding any time limits in the domestic law of contracting states.

Furthermore, Greece has chosen to apply Part VI of the MLI on Mandatory Binding Arbitration (MBA). Greece reserved the right to set a three-year period limit for a MAP, following which a taxpayer may request initiation of the MBA mechanism, instead of the two-year period provided for in article 19 par. 1(b) of the MLI.

Greece is one of the seven countries that opted for the alternative type of process of the application (i.e. the *independent opinion* approach)⁴ and notified a reservation not permitting arbitration to be pursued in the event of a court or administrative tribunal of either contracting state rendering a decision on the issue before or during the arbitration process.

Greece also signed in for the obligation to ensure that taxpayers and advisers are not entitled to disclose any information received during the MBA procedure. It is important to underline that the arbitration decision is binding for Greece and each Contracting Party, with the exception of, amongst other cases, a different agreement between the states within three months from the delivery of the arbitration decision.

³ The practical implication of not adopting the PE status provisions remains to be seen, considering the aggressive approach of Greek tax authorities, particularly in relation to dependent agency PEs.

⁴ Under the "independent opinion approach", as opposed to the "baseball approach", the arbitration panel is presented with the facts and arguments by the parties, but reaches its own decision.

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