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A revolution in cross-border tax settlements, i.e. a few words on the Convention to prevent and counter tax base erosion and profit transfer

Tax Alert

Dear Readers,

On 7 June 2017, 68 countries (including Poland) signed in Paris the *Multilateral Convention to implement tax treaty-related measures to prevent base erosion and profit shifting*, hereinafter referred to as the Convention or the MLC.

The Convention, which is a turning point in the fight against tax evasion by multinational companies, has been signed by all Member Countries of the OECD (excluding the USA and Estonia). Nine more countries, including Estonia, declared their willingness to accede to the Convention in the future. Please note that the MLC signatories include countries and tax jurisdictions generally considered to be tax havens, such as Andorra, Monaco, Seychelles, Hong Kong, Cyprus, Malta, Luxembourg or the Isle of Man.

WHAT IS THE CONVENTION?

The countries affiliated to the OECD and G20 have long been working on a tool that would help them close the tax loopholes in the agreements on the avoidance of double taxation. The existing gaps are, according to the OECD, used by multinational corporations in order to decrease the tax base and transfer the profits to tax havens. The recently signed Paris Convention is to combat such phenomena.

The Convention enables the introduction, by means of a single document, of amendments to a number of agreements on avoiding double taxation, without the necessity to renegotiate each agreement separately between the countries that have signed it.

Each of the countries acceding to the Convention is thus required to submit a list of agreements on avoiding double taxation which they intend to modify by means of the Convention provisions. In addition, each country may submit a list of exceptions and notifications to specific articles of the Convention. The currently signed Convention will be subject to ratification by individual countries, including Poland.

WHAT WILL THE CONVENTION CHANGE IN POLISH AGREEMENTS ON AVOIDING DOUBLE TAXATION?

By signing the Convention, Poland expressed its wish to cover with the Treaty 78 agreements on the avoidance of double taxation, but some of the agreements listed by Poland concern countries that have not

signed the Convention. It arises that the Ministry of Finance assumes that in the near future only 47 of the submitted agreements will be changed.

Poland has decided to introduce some changes to the agreements on the avoidance of double taxation, concerning, e.g. the anti-abusive clause (the so-called *Principal Purpose Test*), methods of avoiding double taxation, rules of dividends taxation and the introduction of the so-called real estate clause.

The changes introduced by the Convention may affect the application of the exemptions or preferential tax rates stipulated in the agreements on the avoidance of double taxation concerning certain categories of revenues, e.g. interests, dividends and royalties. In other words, when reviewing the cross-border tax consequences of specific transactions, it will be necessary to take into account both the content of an agreement on the avoidance of double taxation concluded with a particular country, and its modifications based on the MLC and objections to it.

WHEN WILL THE CONVENTION ENTER INTO FORCE?

From the formal perspective, the MLC will enter into force within three months from its ratification by at least 5 of the signatory countries. According to the assumptions of OECD, this should take place in 2018.

In practice, to make the Convention affect the bilateral agreements, the parties of such bilateral agreements first of all need to be the signatories to the MLC and ratify the Convention, as well as submit the necessary documents to the Secretary General of the OECD.

Moreover, in the case of bilateral agreements, the condition for the Convention's application is that it needs to enter into force for both parties of the agreement. In such a situation, with regard to the withholding tax – the MLC will apply only from 1 January of the year following the year in which it has entered into force for the other country (party to the agreement), and in the case of other taxes settled periodically – the MLC will enter into force after 6 months from the moment the Convention for the other country has entered into force.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

Tomasz BEGER

Tax Partner

Tax advisor (10197)

E: tomasz.beger@rsmpland.pl

M: + 48 606 118 277

RSM Poland

Droga Dębińska 3b
61-555 Poznań, Poland

www.rsmpland.pl

office@rsmpland.pl

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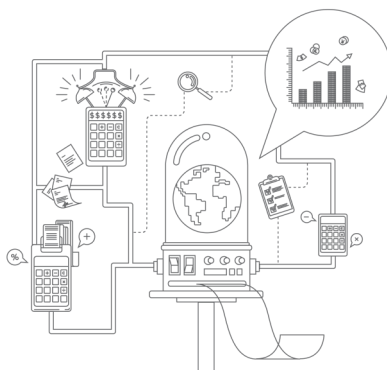
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31.07.2017



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