



# MLI IMPLEMENTATION

## Questionnaire Report

Dalton Luiz Dallazem | SJD Candidate – UF

# QUESTIONS

- 1) Did your country already sign the MLI? If so, was it already ratified? How is the ratification process in your country?
- 2) Has it been a public debate about the position of your country in front of the MLI?
- 3) There is some significant absence in the covered Tax Treaties?
- 4) In case your country has already signed the MLI, did it choose to include the optional preamble language of Article 6(3)?
- 5) In case your country has already signed the MLI, was the clause “substantive economic activities” defined? If so, what was the given definition? Did your country establish what factors should be considered for determining where value is created? If so, what are these factors?

# QUESTIONS

- 6) Do you think the MLI preamble serves as a new backdrop for interpreting all provisions of every covered tax agreement listed by signatories? In other words, the MLI is designed to be applied alongside existing tax treaties. In that regard, if your country and another treaty party have chosen to list the tax treaty between them as a covered agreement, does that mean such treaty should now be interpreted in light of the additional MLI preamble language, even if there are otherwise no matching elections between them?
- 7) Regarding the MLI's Anti-Treaty-Shopping minimum standard approaches, what was your country's choice: a principal purpose test (PPT) or a PPT combined with either a simplified or detailed limitation on benefits (LOB) provision? Is there some guidance on how a PPT will be applied in practice?
- 8) Considering the MLI does not grandfather any existing structures, the PPT can potentially apply to deny benefits to a payment or a taxable year after the effective date of the MLI if the operating structure's original purpose – set years ago – does not pass the test. Does this circumstance trigger any conflict with domestic laws of your country, particularly with your Constitution or any existing taxpayer bill of rights?

# QUESTIONS

- 9) Does your country have elected to adopt the expanded PE provision? If so, will your country have to make corresponding changes to the domestic law or already have in place domestic laws that are broad enough to accommodate the expanded notion?
- 10) What was your country option related to Article 13 of the MLI (Specific Activity Exemptions)?
- 11) In your opinion, are there significant reservations made by your country?
- 12) Do you identify any substantial provision(s) not mentioned in this questionnaire that could potentially modify the application of the current tax treaties in force in your country?
- 13) Feel free to make comments about any topic you consider important concerning the MLI implementation in your country.

# 1- Signing, ratification and ratification process?

Signed and ratified: Uruguay (ratification law awaiting official publication)

Signed, not ratified: Andorra, Argentina (Congress), Colombia (Congress + Senate + Constitutional Court), Chile (Congress + Senate), Costa Rica, Mexico (Senate), Panama, Peru, Portugal, Spain (Congress + Senate)

Not yet signed: Bolivia, Brasil, Cuba, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Honduras, Nicaragua, Paraguay, United States, Venezuela

## 2- Public debate?

No: Andorra, Argentina, Colombia, Chile, Costa Rica, Mexico, Panama, Peru, Portugal, Uruguay

Spain (no formal, but academic events)

### 3- Significant absence in the covered tax treaties?

No: Andorra, Colombia, Chile, Costa Rica, Mexico, Panama, Peru, Portugal, Spain,

Argentina: Bolivia (Andean Pact Model), Brazil (amended in 2018 following MLI principles), Germany (comprehensive amendment under negotiation) and Uruguay (there is only an information exchange agreement with some additional provisions)

Uruguay: Germany and Switzerland

## 4 – Inclusion of the optional preamble language of article 6(3)?

Yes: Andorra, Argentina, Colombia, Chile, Costa Rica, Mexico, Panama, Peru, Portugal, Spain, Uruguay

## 5 – “Substantive economic activities” defined? Value creation factors?

No: Andorra, Argentina, Colombia, Chile, Costa Rica, Mexico, Panama, Peru, Portugal, Spain, Uruguay

But,

Argentina and Spain have some guidelines regarding substance in their domestic law.

Colombia has a general anti abuse rule

## 6 – MLI as a new backdrop for interpretation even when no matching elections?

Yes: Argentina, Chile, Mexico, Panama, Peru, Portugal, Spain, Uruguay (in the case both countries have chosen this same option)

Not sure: Andorra, Colombia, Costa Rica

## 7 – Anti-treaty-shopping minimum standards? Any PPT guidance?

PPT: Andorra, Costa Rica, Panama, Portugal, Spain

PPT + Simplified LOB: Argentina, Mexico, Uruguay

PPT (Interim Measure): Colombia, Chile, Peru (where possible – LOB through bilateral negotiation)

No PPT guidance: Andorra, Argentina, Colombia, Chile, Costa Rica, Mexico, Panama, Peru, Portugal, Spain, Uruguay

# 8 – PPT and past operating structures? Conflicts with domestic law?

Potentially: Chile, Colombia, Mexico, Uruguay

Depend on a case-by-case analysis: Spain

No: Argentina

Not sure: Andorra, Costa Rica, Panama, Peru, Portugal

# 9 – Expanded PE provision? Domestic law changes to accommodate?

Yes and Yes: Mexico (2020)

Yes and No: Argentina, Chile, Spain, Uruguay

Yes and not sure: Colombia, Costa Rica, Peru

Reservation/entire Article: Andorra, Panama, Portugal

# 10 – Article 13 Option (Specific Activity Exemptions)?

Option A – Art. 13(1): Argentina, Colombia, Costa Rica, Mexico, Peru, Spain, Uruguay

Neither Option: Chile, Portugal [Agreements contain Article 13(5)(b) provision]

Reservation/entire Article: Andorra, Panama

# 11 – Significant reservations?

No: Argentina, Mexico

Andorra: Articles 4, 8, 12, 13, 14, 15

Colombia: Articles 3, 10

Chile: Articles 8, 14, first sentence of Art. 16(1)

Costa Rica: Articles 3, 5, 11, 14

Panama: Articles 3, 4, 5, 8, 10, 11, 12, 13, 14, 15

Peru: Articles 3, 11, 14

Portugal: Articles 3, 4, 10, 12, 14, first sentence of Art. 16(1)

Spain: Articles 4, 11, 14, first sentence of Art. 16(1)

Uruguay: Article 11

12 – Any other substantial provision that could potentially modify TT in force?

Nothing relevant to report

# 13 – Additional comments?

Argentina: even with uncertainties about the next government position on the OECD and BEPS, the MLI should be ratified.

Chile: MLI may have certain influence on the tax treaty interpretation even before its ratification.

Colombia: due to the short treaty network and poor experience, a tax treaty training should start for the officials and judges.

Mexico: elaboration of condensed versions (MLI and Treaty) could be very useful.

Spain: Articles 107 and 108 of the Spanish Corporate Tax provide for a tax-exempt dividend regime for holding companies. Such special regime might be limited by the application of the PPT provided that the DTC network of a State or the non-taxation at source in the distribution of dividends may be the main ones – or even the only reasons – considered when organizing the business group.

THANK YOU!