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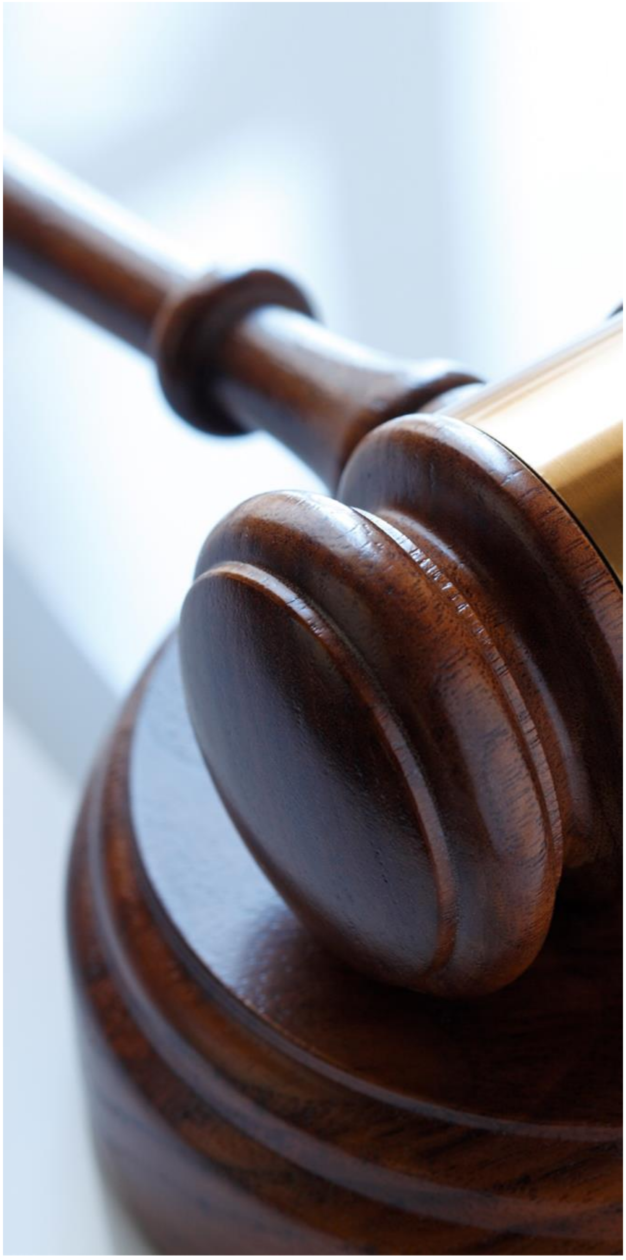
1917-2017
100 YEARS

Signature of Multilateral Instrument

Legal flash Tax

June 2017



On June 7, 2017, Spain and 67 other countries signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"), which will swiftly implement measures of the OECD's BEPS (Base Erosion and Profit Shifting) Plan into the existing network of double tax treaties.

We must remember that the BEPS Plan is made up of 15 actions published in October 2015. The MLI, published in November 2016, covers the different options for implementing BEPS actions. By signing the MLI, the signatories confirm their provisional position regarding these options, and the effective implementation process of the BEPS actions takes a step forward.

Given the bilateral nature of double tax treaties, only the reciprocal treaties Spain has with MLI signatory countries will be amended. Under the MLI's current wording, it is understood that there will be no amendments to treaties signed with (i) non-MLI signatory countries (the most relevant examples being the US and Brazil), or (ii) signatory countries whose tax treaties with Spain are not included in the multilateral amendment (e.g., Spain has not included the treaties with China, Japan, the Netherlands and Norway[1], and Switzerland has not included Spain).

In the case of Latin America and, although some countries did not sign the MLI (Bolivia, Ecuador and Venezuela; Panama has not signed but it does intend to do so), its signing has been widespread.

Regarding the MLI's content, although a detailed analysis of many matters of interest should be carried out, we highlight the following particularly relevant matters:

- Spain has opted for the simplified version of the "Principal Purposes Test" or "PPT," which is an anti-abuse rule denying application of the MLI's benefits in transactions in which one of the principal purposes is to obtain those benefits.

- The amendment of the concept of permanent establishment is reflected in the body of the treaties Spain signed.

- Arbitration is included as a mechanism to resolve double taxation matters within the framework of the double tax treaties, although Spain excludes some matters from this possibility, including anti-abuse rules and sanctioning procedures, and it limits it to those cases for which national administrative or court decisions have not been issued.

Finally, we must remember that, on Wednesday, the countries only signed the MLI. For the MLI to come into force, at least five countries must ratify and deposit it. For the MLI to be ratified and correctly incorporated into Spain's legal system, the parliamentary procedures under article 94 of the Spanish Constitution must be carried out, followed by publication in the Official Gazette of the Spanish State.

[1] In the two latter cases, we must consider that these treaties are being renegotiated.

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In practical terms, we must also consider that the amendments of each of the double tax treaties covered by the MLI will take place some time after the countries parties to the treaties and signatories of the MLI have ratified the MLI. This means that it will be at least a year (probably more) before we see the first effective changes in our tax treaties.

For additional information, please contact your usual contact person at Cuatrecasas.