

October 18, 2022

MEXICAN FISCAL UPDATE

MEXICAN SENATE APPROVES OECD MULTILATERAL INSTRUMENT

I. Background

Participating OECD and G20¹ countries have developed an MLI within the BEPS Action Plan that will seek to modify the interpretation of existing DTC².

The main objectives of the MLI are to: *(i)* provide tools to ensure that benefits derived from international transactions are taxed in the jurisdictions where the economic activities that generate them are carried out and/or the respective value is produced; *(ii)* provide taxpayers with greater certainty in terms of dispute resolution; and *(iii)* standardize compliance requirements for the application of benefits derived from DTCs.

In this regard, the main additions to the MLI establish anti-abuse clauses for the application of the benefits provided in the DTCs, including:

- (i)* LOB clause: Anti-abuse clause that allows the application of the benefits of the respective DTC only to those "qualified" residents who meet certain requirements or tests precisely established for such purposes.
- (ii)* PPT clause: that carry out transactions whose primary purpose, or one of their main purposes, is to apply the benefits provided in such DTC.

II. MLI effects in Mexico.

The MLI provides that its contents are intended to modify the interpretation of the terms of the DTCs that each jurisdiction has chosen for such purposes (Art. 1, MLI).

Considering the principle of international reciprocity, the provisions of the MLI will only modify a CTA when both jurisdictions have expressed their willingness to consider the respective DTC as a CTA. Likewise, a specific provision of the MLI will only modify a CTA when both jurisdictions have accepted the same or have not expressed any reserves on its application.

Specifically, Mexico signed the MLI along with other States at the plenary session held at the OECD headquarters in Paris on June 7, 2017 and, in addition, submitted a provisional list of reserves to that multilateral instrument³.

¹ The Group of Twenty (G20) is the main forum for macroeconomic policy coordination among the world's twenty largest economies, which includes the perspectives of both developed and emerging economies.

² OECD, Action 15 Final Report 2015 - Development of a multilateral instrument to amend bilateral tax treaties (OECD 2015), International Organizations' Documentation.

³ i.e., Mexico established as a reserve to the MLI not to apply to CTAs the provisions related to transparent entities.

It is important to note that Mexico reported a list of 61 tax treaties that should be considered as CTAs, comprising all the DTCs that Mexico currently has in force, together with their amending protocols. However, there are certain jurisdictions that have not signed the MLI or have not considered the DTCs entered into with Mexico as a CTA, including Brazil, Ecuador and the United States of America ("US")⁴.

The MLI must comply with all the formalities provided for at the Mexican federal and international level for its entry into force, including its approval before the Senate, as well as its enactment and publication in the Mexican Official Gazette, in order to become a binding source of law in our country.

In this regard, on October 13 of this year, the Mexican Senate approved the multilateral instrument in question, with instructions to send it to the Federal Executive Power for its enactment and publication in the Mexican Official Gazette.

As a next step at an international level, the MLI must be deposited with the OECD and will be binding as of the first day of the fourth month following its deposit with said international organization (Art. 34 (2), MLI).

The content of such international instrument will be analyzed in more detail in our Tax Update for fiscal year 2023.

Abbreviations

* BEPS	Action Plan to Combat Base Erosion and Profit Shifting
* CTA	The DTCs that each jurisdiction has chosen to be covered by the MLI
* DTC	Bilateral Treaties for the Avoidance of Double Taxation and the Prevention of Tax Evasion
* LOB	Limitation of Benefits
* MLI	Multilateral Instrument
* OECD	The Organization for Economic Competition and Development
* PPT	Principal Purpose Test
* US	Unites States of America

In case there is any comment, doubt, clarification or suggestion related to the content of this analysis, we remain at your service at (55) 5081-4590 or at the e-mail address info@turanzas.com.mx.

Sincerely,

TURANZAS, BRAVO & AMBROSI

Abogados Tributarios
www.turanzas.com.mx

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⁴ The US has formally communicated that it will not sign the MLI; therefore, the provisions contained in said international instrument will not be applicable to transactions between residents of Mexico and the U.S.