

ACT TO RATIFY MULTILATERAL INSTRUMENT WITH MAJOR REVAMPING OF DOUBLE TAX TREATIES

This is to let you know that Poland has adopted legislation that ratifies the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**" or "**MLI**"). The new law is waiting for presidential signature.

Once fully ratified, MLI will automatically amend Poland's double tax treaties (DTT) without Poland having to engage in time-consuming and drawn-out negotiations of each single DTT.

Some MLI provisions are obligatory and the countries must adopt them (**minimum standard**). The others can be adopted (across-the-board or conditionally) but may also be rejected.

Below are the most important MLI provisions which may affect Poland's DTTs to various degrees.

- Article 3: Artificial pass-through (fiscally transparent) partnerships created for tax evasion purposes are denied treaty privileges.
- Article 4: Provisions on dual resident entities. Mandatory mutual agreement procedure to determine the country of which the entity will be considered a resident.
- Article 5: Introducing the proportional credit method as a way of eliminating double taxation.
- **Article 6(1) (part of minimum standard): DTT preambles to include a new rule of interpretation which says that elimination of double taxation must not create opportunities for non-taxation or reduced taxation through tax evasion or avoidance.**
- **Article 7 (part of minimum standard): Introduces the principal purpose test to deny DTT benefits to transactions where obtaining such benefits was the principal or one of the principal purposes.**
- Article 8: WHT exemption or reduced rate available if shares in subsidiary held for at least 365 days.
- Article 9: Introduces the "real estate clause" that prevents the practice of forming real estate companies with foreign owners and then selling interests in those companies to non-residents to avoid having income from the sale taxed in the country where the property is situated.
- Article 11: Introduces the "protection clause" which secures the right of Contracting Jurisdictions to tax their own residents.
- **Article 16: Introduces the mutual agreement procedure (part of minimum standard) whereby you are entitled to present your case to any of the contracting jurisdictions concerned, rather than only to the authorities of the country of which you are a resident for tax purposes, which was the previous rule.**
- Article 17 (Corresponding Adjustments). This will replace the existing regulations on corresponding adjustments or will be inserted into those DTTs where no such regulations were present.

The precise scope of changes in Poland's DTTs will depend on the positions taken by the counterparties and on the options they choose together with Poland.

After MLI becomes effective, a DTT will have to be reviewed to verify the extent to which it has been amended.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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