

BEPS Multilateral Convention: Application and Interpretation

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VCLT: Amendment of Treaties

- Art 39 A treaty may be amended by agreement between the parties. Part II (conclusion and entry into force applies)
- Art 11 The consent of a state may be expressed by signature, exchange of instruments, ratification, acceptance or accession, or by any other means if so agreed.
- Art 14 Consent to be bound by ratification, acceptance or approval
- Art 16 Exchange or deposit of instruments



BEPS MLI: Amendment of Treaties

- Art 1 Modifies all Covered Tax Agreements
- Art 2(1) "Covered Tax Agreement" is one notified by a state to the Depository
- Art 27(2) Subject to signature, ratification acceptance or approval
- Art 29 Notification
- Art 34 Entry into force – 5 states
- Art 35 Entry into effect (Art 36 Arbitration)
- Art 40 Withdrawal



Interpretation

- Art 2(2). As regards the application of this Convention at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the relevant Covered Tax Agreement (CTA).



Interpretation and Implementation

- Art 32(1) Any question arising as to the interpretation or implementation of provisions of a CTA as they are modified by this Convention shall be determined in accordance with the provision(s) of the CTA relating to the resolution by mutual agreement of questions of interpretation or application of the CTA (as those provisions may be modified by this Convention).
- Art 32(3). The competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the CTA. (OECD Model Art 25(3)).



Interpretation and Implementation

- 32(2). Any question arising as to the interpretation or implementation of this Convention may be addressed by a Conference of the Parties convened in accordance with paragraph 3 of Article 31 (Conference of the Parties).



Interpretative materials

- Art 32 VCLT- Supplementary material
  - Explanatory statement
  - BEPS Actions publications
  - Public comments on consultations?



Other interpretative issues

- Side-by side reading of bilateral treaty with MLI, Notification/ ratification etc. instrument
- Consolidated version of bilateral treaty
- Domestic law implementation instrument
- Language



Meaning and the purpose of the treaty

- VCLT art 31(1)
- Purpose of MLI
  - Preamble
- Purpose of Covered Tax Agreements
  - MLI Art 6 (1) preventing double taxation without opportunities for non or reduced taxation through avoidance or evasion
  - MLI Art 6(3) optional purpose of economic relations and tax cooperation



Further Information

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Schwarz on Tax Treaties (4th Ed)

www.cch.co.uk/content/schwarz-tax-treaties-4th-edn

Blog: Kluwer International Tax

http://bit.ly/1Dm2hcZ