

TAX & EXCHANGE CONTROL

ALERT

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Change on a global scale: South Africa's ratification of the MLI may be imminent

South Africa signed the Base Erosion and Profit Shifting (BEPS) Multilateral Instrument (MLI) on 17 June 2017, but since then, very little progress has been made for it to be ratified, which is a pre-requisite for it to be applicable to South Africa and the double tax agreements (DTAs) it has concluded with other countries. However, on 25 May 2022, National Treasury and the South African Revenue Service (SARS) appeared before the National Assembly's Standing Committee on Finance (SCOF) regarding South Africa's ratification of the MLI.



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In this article, we briefly discuss some of the issues discussed during National Treasury and SARS' appearance before SCOF and where things now stand.

WHAT IS THE MLI?

In their appearance before SCOF, National Treasury and SARS explained that the MLI is aimed at updating the existing network of bilateral tax treaties (more than 3,000 tax treaties worldwide) to reduce opportunities for tax avoidance and base erosion by multinational enterprises.

APPLICATION OF THE MLI TO SOUTH AFRICA'S DTAs

South Africa has listed 76 DTAs to be covered by the MLI. Once the countries that are party to these DTAs have ratified the MLI, the agreements will be consistent with the tax-related BEPS measures without the need for any of the DTAs to be renegotiated.

National Treasury and SARS indicated that as at 11 August 2021, 42 of the 76 countries that are party to DTAs with South Africa had ratified the MLI. It was further noted that five of South Africa's DTAs would not be covered by the MLI, as they are either currently being renegotiated with BEPS recommendations being incorporated into them (Germany, Malawi and Zambia) or as they are incompatible with the MLI (Grenada and Sierra Leone).

URGENCY IN RATIFYING THE MLI

National Treasury and SARS indicated to the SCOF that one of the measures adopted by the Inclusive Framework (countries collaborating on the implementation of the OECD/G20 BEPS package) for the monitoring of the implementation of the OECD/G20 BEPS package is the peer review process. The peer review for the

implementation of the Action 6 Report, dealing with tax treaty abuse, has already started.

The implementation of this Action 6 Report is dependent upon Inclusive Framework member countries (of which South Africa is one) having ratified and implemented the MLI or renegotiating their treaties in accordance with its principles. As South Africa has not yet ratified and implemented the MLI, this implies that South Africa has already earned a negative point in the Action 6 peer review. Therefore, National Treasury and SARS indicated that the ratification of the MLI is important for South Africa to remain compliant with the OECD/G20 BEPS minimum standards and address BEPS in South Africa.

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CONTINUED

SOUTH AFRICA'S MLI ADOPTION IN THE FINAL STRAIGHT

Following National Treasury and SARS' appearance before SCOF on 25 May 2022 and their presentation of the MLI to the SCOF for consideration, they also appeared before the National Council of Provinces' Select Committee on Finance on 21 June 2022. It therefore appears that the actual adoption and ratification of the MLI may be imminent. It is important to appreciate that the MLI can only become part of

South African law once it has been ratified, which also applies to the DTAs to which the MLI will apply. This is because in terms of section 231 of the Constitution of the Republic of South Africa, 1996, an international agreement will only be binding on South Africa once it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is a self-executing treaty that does not require ratification.

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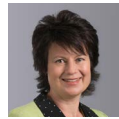
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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