IBFD Course Programme
The BEPS Multilateral Convention and Its Impact on Tax Treaties
Amsterdam, 20 – 21 June 2019
Summary
On 1 July 2018, the OECD Multilateral Instrument (MLI) entered into force. Until now, more than 80 countries have signed up to this new instrument covering hundreds of tax treaties. Since most of these will be affected as from 2019, it is now the last opportunity for tax practitioners to come to understand, assess and address the practical implications of the MLI. This very short course is designed to enable you to comprehend the impact of the MLI on your holding, financing, IP and supply chain structure as well as to work out your defence strategy.

Overview and Learning Objectives
Following a short general overview of domestic and tax treaty anti-avoidance measures, the first part of this 1.5-day intermediate-level course provides an in-depth analysis of the MLI, particularly its compatibility with the current double tax treaty network (such as the interrelationship between treaties and the MLI, the MLI and the OECD Model/Commentary, and the possible controversies). Procedural provisions (such as scope, structure, entry into force, effective date, chapters and provisions) will be looked at through practical examples before attention will be paid to the substantive rules in the MLI. Two sessions will deal with the provisions on treaty abuse, specifically with the principal purpose test (PPT) and the limitation on benefits (LOB) clause, the two most debated tools in the MLI. Practical implications such as the impact on holding, financing, IP and supply chain structures will be explored. Throughout the course, attention will be given to the different reservations, options and notifications given by major European countries to accentuate the practical impact of the MLI on European corporations.

Field of Study
Taxes

Who Should Attend?
The course is suitable for tax practitioners in tax advisory firms, in-house tax personnel and government officials.

Course Level and Prerequisites
This is an intermediate-level course. Participants will be expected to have a good knowledge of the tax treaties, their practical application and impact on structures involving holding, financing and IP companies as well as supply chains.
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Day 1

08.30 - 09.00  Registration

09.00 - 09.20  Welcome and IBFD Overview

09.20 - 10.40  Domestic and Tax Treaty Anti-Avoidance Measures – General Overview

- International tax planning techniques and examples: inappropriate use of tax treaties?
- Domestic anti-avoidance measures and tax treaty anti-avoidance measures
  - domestic general and specific anti-abuse rules
  - relationship between domestic anti-avoidance measures and tax treaties
  - OECD Model anti-avoidance rules, pre-BEPS
    - general anti-abuse principle in tax treaties
    - specific anti-abuse clauses in tax treaties and limitation on benefits (LOB)
    - rules in existing treaties
- OECD/G20 BEPS Action 6 Final Report
  - general overview
  - the minimum standards on preventing tax treaty abuse and, specifically, treaty shopping

10.40 - 11.00  Break – Refreshments

11.00 - 12.45  OECD Multilateral Convention to Implement Measures to Prevent BEPS (MLI)

- Introduction
  - role and legal status
  - modus operandi
  - entry into force
  - covered tax agreements
- MLI substance provisions
  - general overview of BEPS provisions
    - transparent entities
    - treaty abuse
    - avoidance of permanent establishment (PE) status
    - improving dispute resolution procedures and arbitration
  - structure: compatibility clauses, reservations and notifications
- Interpretation issues and potential controversies
- What is the impact of the MLI? Current status concerning implementation, overview of choices and reservations made by countries and practical consequences

12.45 - 14.00  Lunch
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14.00 - 15.20  MLI – Treaty Abuse, Parts II and III

- MLI and the minimum standards
  - purpose of a covered tax agreement: preamble
  - principal purpose test rule (PPT)
  - simplified limitation on benefits (SLOB) rule
- MLI – Part III: optional provisions
  - dividend transfer transactions
  - capital gains from the alienation of shares or interests of entities deriving their value principally from immovable property
  - the anti-abuse rule for PEs situated in third jurisdictions
- MLI – Part II: hybrid mismatches
  - the treatment of fiscally transparent entities
  - the tiebreaker rule for dual residence entities
- Elimination of double taxation
- Analysis of options and reservations of selected countries (e.g. France, Germany, Italy, Switzerland and the United Kingdom)
- What similar rules have been adopted in existing tax treaties?
- What is the potential impact of these provisions on holdings, finance structures, supply chains or mergers?

15.20 - 15.40  Break – Refreshments

15.40 - 17.00  MLI – Part IV: The Permanent Establishment, Post-BEPS

- OECD/G20 BEPS Action 7, the MLI and the 2017 OECD Model
- Fixed place of business PE
  - artificial avoidance of PE status through the specific activity exemptions – the auxiliary or preparatory condition
  - the new anti-fragmentation rule: PEs and closely related enterprises
- Dependent and independent agent
  - artificial avoidance of PE status through commissionaire arrangements and similar strategies
  - “the principal role leading to the conclusion of contracts”
- Building site, construction project or installation project (supervisory activities): splitting up of contracts
- Analysis of options and reservations of selected countries (e.g. France, Germany, Italy, Switzerland and the United Kingdom)
- What similar rules have been adopted in existing tax treaties?
Day 2

09.00 - 10.40  **Analysis of the General Anti-Avoidance Rule (GAAR) of the Principal Purpose Test (PPT)**

- GAAR provision in domestic law and in tax treaties
- Analysis of the PPT provision of the MLI and the 2017 OECD Model
  - PPT requirements and features – BEPS Action 6 Final Report and OECD Commentaries
  - Analysis of examples of application provided by the BEPS Action 6 Final Report and the OECD Commentaries
- Problems of interpretation and application
  - burden of proof
  - subjective test
  - objective test
- Comparative analysis with similar existing rules of the European Union
- Is there any country administrative guidance? Is there any case law?
- What is the potential impact of these provisions on holdings, finance structures, supply chains or mergers?

10.40 - 11.00  Break – Refreshments

11.00 - 12.45  **Analysis of Limitation on Benefits (LOB) Provisions**

- General overview of LOB provisions
- MLI
  - SLOB rule
  - Detailed LOB rule with an anti-conduit transaction provision
- OECD/G20 BEPS Action 6
  - SLOB rule and detailed LOB rule – main differences
  - Analysis of examples of application provided by the BEPS Action 6 Final Report
- 2017 OECD Model LOB provision
- 2016 US Model LOB provision
- Examples of rules from selected countries
- Is there any administrative guidance? Is there any case law?
- What is the potential impact of these provisions on holdings and finance structures?