

Mexico approves Multilateral Convention

Tax - October 13th, 2022

On October 12, 2022, the Chamber of Senators of the Congress of the United States of Mexico has approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument"), which was submitted for consideration of such Chamber on November 23, 2018.

The Multilateral Instrument will simultaneously modify 61 Conventions to Avoid Double Taxation ("CDT") executed by Mexico, with the purpose of adopting the measures contained on Action 15 of the OECD BEPS Project and align the texts of such CDT considering the BEPS recommendations.

It is expected that Mexico will deposit the instrument of ratification before the OECD in the next days for it to become effective. The Multilateral Instrument will enter into force 3 months after its deposit, according to Article 34. If it is deposited during October 2022, the Multilateral Instrument will enter into force on February 1st, 2023.

The modified text of each CDT will result applicable to the extent that the Multilateral Instrument is in effect in the countries that are counterparts to Mexico, in accordance with the following:

- a) Regarding taxes that are withheld at the source, on January 1st of the next year in which the Multilateral Instrument entered into force in both countries.
- b) Regarding other taxes, for taxable periods beginning on January 1st, following 6 months after the Multilateral Instrument entered into force in both countries.

Considering the above, with respect to countries that have already made the deposit of the instrument of ratification, acceptance or approval, in general terms, the Multilateral Instrument would enter into force on January 1st, 2024.

Notwithstanding the above, a case-by-case analysis should be performed in order to determine the effects on each CDT executed by Mexico.

The Multilateral Instrument will be applicable to the 61 covered CDT executed by Mexico and will imply the adoption of measures in connection with the following:

1. Acknowledgement of income earned by Transparent entities.
2. Treatment of entities with dual tax residency.
3. Update of the CDT's purpose to establish the avoidance of non-taxation and the prevention of tax evasion or avoidance within its objectives.
4. Addition of measures to avoid the use of tax treaties in abusive circumstances (limitation of benefits or principal purpose test).
5. Limitation of source taxation on dividends in cases of substantial participation.
6. Treatment of capital gains arising from the alienation of immovable property shares.
7. Express mention of the scope of a CDI's restriction for a Contracting State to tax its own residents.
8. Modifications to the definition of "permanent establishment" to consider BEPS recommendations (commissionaire arrangements, specific activities and splitting-up of contracts).
9. Application of the minimum standard for improving dispute resolution.
10. Measures for the application of corresponding adjustments for transfer pricing purposes.

We recommend reviewing each CDT executed by Mexico to determine the effects that the Multilateral Instrument will have thereof.

For further information please do not hesitate to contact our experts in the field.

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