

# THE MULTILATERAL INSTRUMENT

TTN NEW YORK

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# WHAT IS IT?

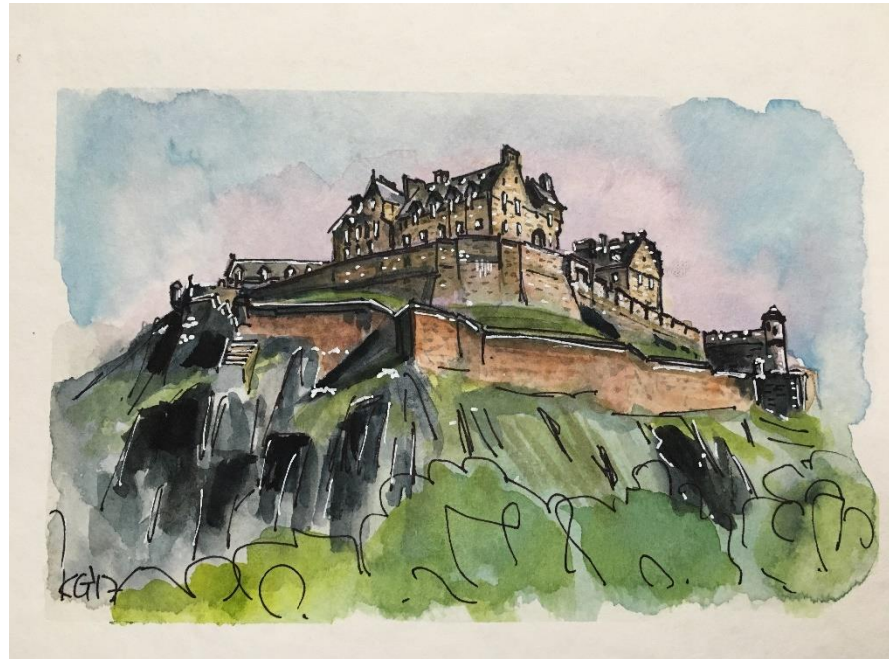
THE MULTILATERAL INSTRUMENT (MLI) IS A MEANS OF IMPLEMENTING TAX TREATY RELATED BEPS MEASURES

# WHAT MEASURES?

HYBRID MISMATCHES

# PREVENTION OF TREATY ABUSE (MINIMUM STANDARD)

# AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS



# IMPROVING DISPUTE RESOLUTION (MINIMUM STANDARD)



# WHY?

- IT IS AN ALTERNATIVE TO RENEGOTIATING TREATIES OR AGREEING ON PROTOCOLS ON A COUNTRY-BY-COUNTRY BASIS
- COULD HAVE HAD MODEL PROTOCOLS
- RENEGOTIATION OF INDIVIDUAL TREATIES TAKES TIME
- THERE WOULD BE TOO MUCH FLEXIBILITY



# HOW DOES IT WORK?

- IT MODIFIES TREATIES DIRECTLY
- IT IS OPEN TO ALL COUNTRIES, NOT JUST OECD MEMBERS
- THE UNITED STATES WILL NOT PARTICIPATE (WAS IN AD HOC GROUP)

# OPTIONS

- COUNTRIES CAN EXCLUDE SPECIFIC TAX TREATIES
- COUNTRIES CAN MEET MINIMUM STANDARDS IN A DIFFERENT WAY
- COUNTRIES CAN OPT OUT OF NON-MINIMUM STANDARD PROVISIONS (I.E. MEASURES WHICH GO FURTHER)
- COUNTRIES CAN APPLY CERTAIN PROVISIONS BY SELECTING OPTIONS

FOR EACH TREATY COUNTRIES SHOULD  
COMMUNICATE:

- IF TREATY IS COVERED
- PROVISIONS WHICH ARE WITHIN THE SCOPE OF THE MLI
- THEIR CHOICE OF OPTIONS



- MAKE RESERVATIONS
- DETERMINE WHAT IS COMPATIBLE WITH EACH OTHER'S COUNTRY
- BILATERAL DISCUSSION CAN ALREADY TAKE PLACE

- IN MANY CASES TWO COUNTRIES MUST MAKE THE SAME CHOICE FOR IT TO APPLY TO A TREATY. DOUBLE TAX RELIEF RESTRICTIONS AND CHOICE OF PPT OR LOB DO NOT NEED TO MATCH
- IF SAME CHOICE:AU TOMATIC
- AVOIDANCE OF PE AND ARBITRATION DO NEED TO MATCH

IN ABSENCE OF MATCH, COUNTRIES HAVE “SPEED DATING SESSION”  
TO TRY TO COME TO AN AGREEMENT



# COVERED TAX AGREEMENTS

- MLI DOES NOT FORM PART OF THE TAX AGREEMENT ITSELF
- CONSOLIDATED VERSIONS ARE LIKELY TO BE MADE BUT MAY NOT BE OFFICIAL

- LANGUAGE CAN BE AN ISSUE
- MAY BE DIFFERENT TO THAT OF TREATY





# STEPS

- TEXT NOVEMBER 2016
- TENTATIVE LISTS OF COVERED TREATIES RESERVATIONS AND OPTIONS TO BE FILED
- SIGNATURE MID 2017
- SUBSEQUENTLY PROCEDURES FOR RATIFICATION

A CHOICE FOR A PARTICULAR OPTION APPLIES TO ALL TREATIES UNLESS A MATCH IS REQUIRED AND IT IS NOT ACHIEVED.

PROBABLY EFFECTIVE DATE 2019



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