ARMENIA MLI GUIDANCE NOTE

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THE MULTILATERAL CONVENTION (MLI)

1. WHAT IS THE MLI?

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI), is a multilateral treaty that enables jurisdictions to swiftly modify the operation of their tax treaties. Developed under Action 15 of the 2013 OECD/G20 BEPS Action Plan, the MLI is intended to introduce the tax treaty related measures that address hybrid mismatches (BEPS Action 2), treaty abuse (BEPS Action 6), avoidance of permanent establishment status (BEPS Action 7) and improving dispute resolution (BEPS Action 14), into the existing double tax conventions (DTCs) among the Parties to the MLI.

Armenia signed the MLI on 7 June 2017. On 14 September 2022, the Armenian Parliament (National Assembly) approved the draft Bill No. K-294 for ratifying the MLI, thereby finalizing the domestic ratification process. Subsequently, Armenia deposited its instrument of ratification and final list of reservations and notifications with the OECD Depositary on 25 September 2023.

The MLI enters into force for Armenia on 1 January 2024. The extent to which the MLI will modify the operation of Armenia's tax treaties will depend on the adoption positions taken by each jurisdiction at ratification, acceptance or approval of the MLI.

2. HOW THE MLI WORKS IN A NUTSHELL

As set out in the MLI and Explanatory Statement, the MLI operates to modify tax treaties between two or more Parties to the MLI. Unlike an amending protocol to a single existing treaty, which directly amends the text of that treaty, the MLI functions alongside existing tax treaties, modifying their application in order to implement the BEPS measures. This approach follows the general legal principle that when two rules apply to the same subject matter, the later in time rule prevails (*lex posterior derogat legi priori*). To the extent that they are incompatible, the provisions of the MLI prevail over the provisions of the DTCs. By the same token, in case of any amendments of provisions of DTCs subsequent to the MLI, those amended DTC provisions prevail over the provisions of the MLI if incompatible.

To respect the sovereign autonomy of the Contracting Jurisdictions and the bilateral nature of DTCs, the MLI provides signatories certain flexibility in determining the DTCs to which the Convention applies, on how to meet the BEPS minimum standards on treaty shopping (Action 6) and dispute resolution (Action 14), and the possibility to choose among alternative provisions or to opt-out of provisions that do not reflect the minimum standards. As a result, the MLI can accommodate

different positions and policy preferences by allowing jurisdictions to customize its adoption to suit their unique national circumstances and cater to specific aspects within their treaty network.

Jurisdictions that sign the MLI are required to identify which of their DTCs they wish to modify and which MLI provisions they wish to implement by outlining their reservations, choice of optional and alternative provisions, and notifications regarding application or non-application to individual DTCs (known as the “MLI Position”). When both treaty partners list a particular DTC and their MLI positions align, the treaty becomes subject to the MLI, resulting in modifications as per the matched positions of both partners.

3. OUTLINE OF ARMENIA’S CHOICES OF APPLICATION OF THE MLI

3.1. COVERED AGREEMENTS UNDER THE MLI

Consistent with the MLI's objective to extend its application to as many existing tax agreements as possible, Armenia has included all its current 51 DTCs as "Covered Tax Agreements" under the MLI. Within these listed DTCs, 9 treaty partners (Belarus, Iran, Kuwait, Kyrgyz Republic, Lebanon, Moldova, Syrian Arab Republic, Tajikistan, and Turkmenistan) have not yet become signatories to the MLI, while another partner (Italy) has not completed the deposit of its instrument of ratification, acceptance, or approval.

Moreover, Denmark, Georgia, Germany, Malta, Singapore, Slovak Republic, and Switzerland have excluded Armenia from their list of agreements covered by the Convention. As a result, the MLI will modify only 34 DTCs (as of 1 December 2023).

3.2. MAIN FEATURES OF ARMENIA’S MLI POSITION

Below is a summary table outlining Armenia’s final list of reservations and notifications as deposited to the OECD Depository on 25 September 2023:

Table 1 Summary of Armenia’s MLI Position (as of 25 September 2023)

MLI PROVISIONS			ARM MLI POSITION
BEPS ACTION	**Art.**	**Description**	
HYBRID MISMATCHES (ACTIONS 2	3	Transparent entities	Adopted
	4	Dual resident entity	Adopted

	5	Application of Methods for Elimination of Double Taxation	Reservation
TREATY ABUSE (ACTION 6)	6	Purpose of a Covered Tax Agreement (***BEPS Minimum Standard***)	Adopted, including the additional language (par. 3)
	7	Prevention of Treaty Abuse (***BEPS Minimum Standard***)	Adopted the PPT, including the discretion not to apply the PPT in certain circumstances (par. 4).
	8	Dividend transfer transactions	Reservation for DTCs that already contain a minimum holding period
	9	Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Adopted, including the optional provision (par. 4)
	10	Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions	Reservation
	11	Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	Reservation
AVOIDANCE OF PE STATUS (ACTION 7)	12	Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies	Adopted
	13	Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Adopted (Option A)
	14	Splitting-up of Contracts	Adopted
	15	Definition of a person closely related to an enterprise	Adopted
IMPROVING DISPUTE RESOLUTION (ACTION 14)	16	Mutual Agreement Procedure (***BEPS Minimum Standard)***	Reservation. Armenia intends to implement the Minimum Standard through administrative measures.
	17	Corresponding Adjustments	Adopted
	18-26	Provisions for Mandatory Binding Arbitration	Not opted-in

3.2.1. On Hybrid Mismatches

Articles 3 to 5 of the MLI are optional provisions that address hybrid mismatches. These provisions reflect BEPS Actions 2 and 6 and aim to align the tax treatment of a hybrid instrument/entity between Contracting States. These provisions are:

- **Article 3 (Transparent entities)**: relates to Article 1(2) of the 2017 OECD Model Tax Convention (MTC) and aims to neutralize the effects of hybrid arrangements, where hybrid entities are treated as a taxable corporation in one jurisdiction (and entitled to treaty benefits such as reduced withholding tax at source) and as a non-taxable transparent entity in another, resulting in double non-taxation. Article 3 MLI ensures that treaty benefits are only granted to the extent in which the income derived by the resident entity of a Contracting State is subject to tax either with the entity itself or with other residents of that same State.
  Armenia has not made a reservation against the application of Article 3.

- **Article 4 (Dual Resident Entity)**: relates to Article 4(3) of the 2017 OECD MTC and aims to addresses the tax abuse scheme where entities claim residence in both Contracting States to gain a tax advantage, e.g., through manipulation of the place of effective management. Article 4 MLI ensures that treaty residency of a dual resident entity is determined on a case-by-case basis through mutual agreement, taking into consideration not only the place of effective management, but also the place where it is incorporated, or any other relevant factors. Armenia has not made a reservation against the application of Article 4.

- **Article 5 (Application of Methods for Elimination of Double Taxation)**: relates to Article 23 of the 2017 OECD MTC and provides the option to countries with respect to elimination of double taxation, specifically to disallow the exemption method for income that is exempt or subject to a reduced treaty rate in the other jurisdiction.
  Armenia has made a reservation regarding the application of Article 5, as it already applies the credit method as general method to alleviate double taxation for its residents.

3.2.2. On Treaty Abuse

Articles 6 through 11 of the MLI stem from Action 6 of the BEPS Report, which aims to prevent tax treaty abuse. While Articles 6 and 7 reflect the minimum standard, the remaining articles are optional provisions.

- **Article 6 (Purposes of a Covered Tax Agreement)**: is a minimum standard under BEPS Action 6 and provides a preamble text stating that the purpose of the DTC is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements.
  Armenia has adopted Article 6, including the optional text indicating a desire to further develop its economic relationships with other signatories and enhance cooperation in tax matters.

- **Article 7 (Prevention of treaty abuse)**: is minimum standard under BEPS Action 6 and relates to article 29 of the 2017 OECD MTC. This Article contains the new

anti-abuse rules to enable tax administrations to deny treat benefits in certain circumstances: the Principal Purpose Test (PPT) and the simplified Limitation on Benefit (LOB) rule.
Armenia has adopted the PPT in Article 7 as its preferred choice, including the optional provision that allows a competent authority the discretion not to apply the PPT in certain circumstances. Armenia has not adopted the simplified LOB but has not made a reservation against it, having accepted LOB provisions before on a bilateral basis in a few of its DTCs.

- **Article 8 (Dividend transfer transactions)**: relates to Article 10(2)(a) of the 2017 OECD MTC and aims to curtail dividend transfer schemes in which taxpayers take advantage of the lower dividend withholding tax rates paid to direct investors (typically 5% compared to 15% to portfolio investors) by arranging for a temporary increase in shareholding shortly before a dividend declaration. Action 6 of the OECD BEPS Project recommends the inclusion of a minimum shareholding period of 365 days before the distribution of the profits in order to benefit from the reduced rate.
  Armenia has made a reservation regarding the application of Article 8 to its covered tax agreements to the extent that these agreements already include a minimum holding period.

- **Article 9 (Capital gains from alienation of shares or interests of entities deriving their value principally from immovable property)**: relates to Article 13(4) of the 2017 OECD MTC and addresses situations in which assets are contributed to an entity shortly before the sale of shares or comparable interests in that entity in order to dilute the proportion of the value of the entity that is derived from immovable property. Article 9 introduces a testing period (365 days preceding the alienation) for determining whether the condition on the value threshold is met and the inclusion of interests comparable to shares, such as interests in a partnership or trust. Article 9(4) provides the option for signatories to apply Article 13(4) of the OECD MTC as produced in the Action 6 Report instead of incorporating a testing period and expanding types of interest covered by existing capital gains provisions.
  Armenia has not made a reservation to Article 9 and opted-in for the application of paragraph 4.

- **Article 10 (Anti-abuse rule for permanent establishments situated in third jurisdictions)**: relates to the new Article 29(8) of the 2017 OECD MTC and aims to deny treaty benefit in situations where an entity that is resident of one jurisdiction derives ‘passive’ income from the other jurisdiction through a permanent establishment (PE) located in a third jurisdiction, and that income is both exempt in the entity’s home jurisdiction and subject to reduced taxation in the third jurisdiction.

Amenia has made a reservation regarding the application of Article 10, as it already applies the credit-method to alleviate double taxation (in line with its reservation against Article 5).

- **Article 11 (Application of tax agreements to restrict a party's right to tax its own residents)**: relates to Article 1(3) of the 2017 OECD MTC and contains a "savings clause" to ensure that a DTC will not generally restrict a jurisdiction's right to tax its own residents.
  Armenia has made a reservation on the application of Article 11 since such savings clause is not part of its general DTC policies.

3.2.3. On Avoidance of PE Status

Articles 12 through 15 of the MLI consist of optional provisions derived from BEPS Action 7. These provisions address certain aspects of the definition of Permanent Establishment (PE) with the goal of preventing the artificial avoidance of PE-status.

- **Article 12 (Artificial avoidance of the permanent establishment status through commissionaire arrangements and similar strategies)**: relates to Articles 5(5) and 5(6) of the 2017 OECD MTC. This article broadens the definition of a dependent agent to include not only situations where a person acts in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, but also where a person habitually exercises the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise. Additionally, it restricts the concept of an 'independent agent' to exclude persons acting exclusively or almost exclusively on behalf of "closely related" enterprises, such as certain situations of control where an enterprise possesses directly or indirectly more than 50% of the interest in the agent.
  Armenia has opted-in for the application of this Article, as it extends the scope for its source taxation of business income of foreign enterprises operating in Armenia.

- **Article 13 (Artificial avoidance of the permanent establishment status through the specific activity exemptions)**: relates to Article 5(4) of the 2017 OECD MTC and aims to restrict the deemed exemptions to those activities that are truly of a preparatory or auxiliary character. The MLI provides two options for implementing this:
  - Option A: to modify Article 5(4) exemptions to be only available if the listed specific activity is of a preparatory or auxiliary character.
  - Option B: to allow Contracting State to preserve the existing exemption only for certain, fewer, specified activities.

  Armenia has chosen to apply Option A, that has a less far-reaching effect in practice and as such is generally more accepted.

- **Article 14 (Artificial avoidance of permanent establishment status through splitting-up of contracts)**: relates to Article 5(3) of the 2017 OECD MTC and aims to prevent the manipulation of contract durations to circumvent PE-status. This article stipulates that if activities are carried out in a place for periods exceeding 30 days but falling short of the specific time threshold for a PE, and if connected activities are carried out at the same place by closely related enterprises for different periods each exceeding 30 days, these periods must be aggregated to decide if the PE-threshold is met.
  Armenia has opted-in for the application of this Article.

- **Article 15 (Definition of a person closely related to an enterprise)**: relates to Article 5(6)(b) of the 2017 OECD MTC and provides clarity on what constitutes a "person closely related to an enterprise" for the purpose of establishing whether or not a PE exist under Articles 12, 13 and 14 of the MLI provisions.
  Since Armenia has adopted Articles 12 through 14, Article 15 automatically applies to Armenia.

3.2.4. On Improving Dispute Resolution and Arbitration

Articles 16 through 26 of the MLI are derived from Action 14 of the BEPS Report, which aims on improving dispute resolution under the Mutual Agreement Procedures (MAP) and additionally offers the option for mandatory binding arbitration if competent authorities are unable to resolve a MAP-case within 2 or 3 years. While Article 16 reflects the minimum standard, the remaining articles are optional provisions.

- **Article 16 (Mutual Agreement Procedure)**: is a BEPS minimum standard and ensures that Article 25, paragraphs 1 through 3, of the 2017 OECD MTC, which provides the mechanism to enable competent authorities to consult with each other with a view to resolving disputes, is implemented in good faith in tax treaties.
  Armenia has made a reservation against the application of the first sentence of Article 25(1) of the 2017 OECD MTC which permits a request for MAP assistance to be made to the competent authority of either Contracting State. With only a limited number of MAP cases to manage, Armenia does not avail of the capacity needed to sustain this full commitment at present. Instead, Armenia intends to implement the minimum standard through the alternative option of administrative measures.

- **Article 17 (Corresponding adjustments)**: relates to Article 9(2) of the 2017 OECD MTC. This Article introduces an obligation for the competent authority to make an appropriate corresponding adjustment with the aim to provide relief for economic double taxation between associated enterprises.
  Armenia has adopted this provision being part of its DTC policies.

- **Articles 18-26 (Provisions on mandatory binding arbitration)**: relates to Article 25(5) of the 2017 OECD MTC and is intended to provide a mechanism for the competent authorities to resolve issues that may otherwise prevent agreement with respect to cases under the MAP.
  While having agreed to mandatory binding arbitration in a few DTCs (notably, with the Netherlands and Germany) as part of an overall negotiation result, Armenia has not chosen to apply the provision of mandatory binding arbitration as this would be on a general basis without any favorable concession in return.

4. THE APPLICATION OF THE MLI

4.1. GENERAL OVERVIEW

The extent to which the MLI modifies an existing tax agreement depends on the MLI Position of the Contracting Jurisdictions and the corresponding application of the so-called compatibility clauses of the MLI. These mechanical provisions set out whether, and to what extent, provisions in the MLI interact with existing provisions of DTCs. In particular, when a substantive provision in Articles 3 through 17 of the MLI conflicts with specific existing DTC-provision covering the same subject matter, this conflict is addressed through a description in the compatibility clause of the existing DTC provisions which the MLI is intended to modify, as well as the effect the MLI has on those existing provisions.

When a DTC is listed as a "Covered Tax Agreement" under the MLI by both Contracting States and there is a positive match between their MLI positions, the corresponding MLI provisions apply to that specific DTC. This generally occurs when:

i) neither of the DTC partners have made a reservation (opt-out) against a relative MLI provision; or
ii) both DTC partners have made a choice to apply (opt-in) the same optional or alternative provision of the MLI.

In addition to such match between their general MLI positions, both DTC partners must have indicated their desire for a relative MLI provision to apply specifically to the DTC by making a notification to this effect. According to the MLI Explanatory Statement (at par. 15), the notification clauses of the MLI serve either of two purposes. One type reflects choices of optional provisions, whereas the other type is to ensure clarity about existing DTC provisions that are within the scope of MLI compatibility clauses.

In the event of a 'mismatch' in MLI positions, the MLI provision typically does not apply between DTC partners. There are, however, exceptions to this rule. In certain cases, the MLI allows an asymmetrical application of provisions where the Contracting Jurisdictions to a Covered Tax Agreement each choose different options

or alternatives, or if one Party does not select an option or alternative, leading to varying applications of the specific MLI provision. In another case, the choice of application of a provision by one Party results in the symmetric application thereof in relation to both DTC partners. Parties may, however, make a reservation against such effects or, alternatively, have to notify their expressed agreement thereof. These cases relate to the application of:

- **Article 5 (Application of Methods for Elimination of Double Taxation)**: Article 5 of the MLI provides three alternative options for incorporating the exemption method into DTCs. Recognizing that asymmetrical application is commonplace in provisions relating to elimination of double taxation, the MLI permits each Contracting Jurisdiction to apply its selected option to its own residents, unless a Party that does not choose to apply any options makes a reservation for the entirety of Article 5 not to apply. Hence, this provision can have asymmetric application.
- **Article 7(7) (Prevention of Treaty Abuse)**: Where one Party chooses to apply the Simplified LOB provision and the other does not, subparagraph b of Article 7(7) allows the latter to permit the Simplified LOB to be applied asymmetrically with respect to their DTC. As a result, the Party that chooses to apply the Simplified LOB – and agrees to such asymmetrical application - would apply both the PPT and the Simplified LOB in determining whether to grant treaty benefits, while the other Party that does not choose to apply the Simplified LOB would apply the PPT alone. However, if either of the Parties has made a reservation against the PPT or the Simplified LOB, none of the abovementioned applies.
- **Article 23(5) (Type of Arbitration Process)**: Paragraph 5 requires the competent authorities, prior to the start of arbitration proceedings, to ensure that each taxpayer involved in the case and their advisors agree in writing not to disclose any of the information received during the course of the arbitration proceedings from either competent authority or from the arbitration panel. A material breach of this agreement between the time at which the request for arbitration was made and before the arbitration panel has delivered its decision will result in the termination of the mutual agreement procedure and the arbitration proceedings with respect to the case. When one Party choose to apply Article 23(5), this provision shall apply in relation to both DTC partners, unless a reservation is made under paragraphs 6 or 7.
- **Article 35 (Entry into Effect)**: Paragraph 2 of Article 35 MLI provides that a Party may choose the substitute "taxable period" for "calendar year" for the purposes of its own application of the entry into effect provision with respect to taxes withheld at source. Similarly, paragraph 3 allows a Party to choose to replace the reference to "taxable periods beginning on or after the expiration of a period" with a reference to "taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period" with respect to other taxes. These options may lead to asymmetrical entry into effect of the MLI provisions between the DTC partners.

See the MLI flowcharts for detailed information and specificities of each MLI provision.

4.2. THE APPLICATION OF ARMENIA'S RESERVATIONS

Each Contracting Jurisdiction is allowed to make a reservation on the application of certain provisions of the MLI. Article 28(1) of the MLI sets out a list of authorized reservations. Reservation applies symmetrically, meaning they typically block the application of the provision, irrespective of whether the other Contracting Jurisdiction has also made the reservation (see Article 28(3) of the MLI).

Armenia has adopted as its overall policy to make only few reservations or opt-outs, intending to have the provisions of the MLI result as much effect as possible. The MLI provisions are mostly aimed to expand source taxation from foreign investment and protect it against tax avoidance schemes. Armenia being mainly an investment importing economy and heavily depending on source taxation for its domestic revenue mobilization (DRM), accession to the MLI and wide application of its provisions is most beneficial to Armenia's interest. An additional consideration has been that many of the MLI provisions are already common feature in Armenia's DTCs and part of Armenia's current general DTC policies.

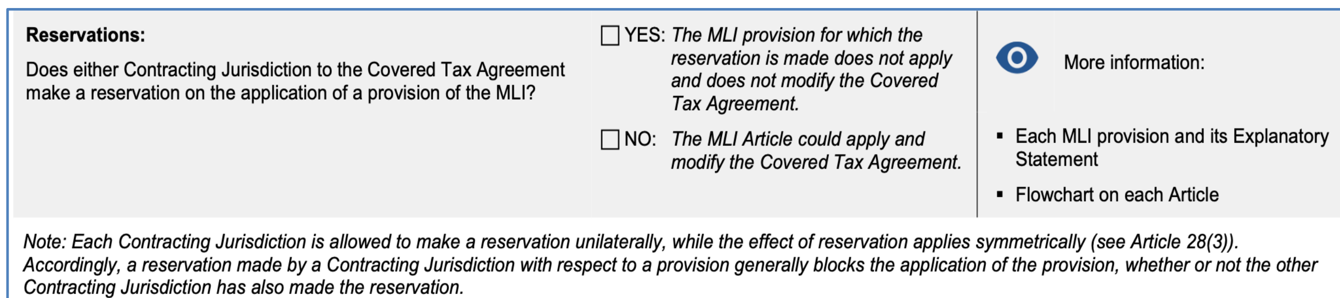
Armenia has made a reservation with respect to the following provisions for the entirety to not apply to its DTCs covered under the MLI:

- Article 5 (Application of Methods for Elimination of Double Taxation);
- Article 8 (Dividend Transfer Transactions), to the extent that the DTC already include a minimum holding period (partial reservation);
- Article 10 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
- Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents), and
- Article 16 (Mutual Agreement Procedure) with respect to the first sentence of Article 16(1) (partial reservation).

As a result, Articles 5, 8, 10, 11 and 16 of the MLI will either for its entirety or partially, as the case may be, not apply between Armenia and all other Parties to the Convention, and the modifications outlined in those provisions will not be implemented in any of Armenia's DTCs covered under the MLI. It should, however, be noted that Armenia's reservation made under Article 11(3)(a) automatically triggers the application of another, interconnected MLI provision, namely Article 3(1) on Transparent Entities. This provision will be modified under Article 3(3) of the MLI to ensure that its application will not interfere with the taxation by a Contracting Jurisdiction of its residents. With respect to Armenia's reservation relating to the first sentence of Article 16(1), which is a Minimum Standard under BEPS Action 14, the MLI provides that in cases of mismatch, Contracting

Jurisdictions must endeavor to reach a mutually satisfactory solution consist with the standard.

To preserve existing provisions, Armenia has made a reservation on the application of Article 8 (Dividend Transfer Transactions) entirely through paragraph 3(b)(i) with respect to all DTCs to the extent that the provision described in paragraph 1 already include a minimum shareholding period. Consequently, if a DTC contains the provisions described in Article 8(1) that provide two split rates, and one includes a minimum shareholding period and the other does not, this clause would preserve the first provisions alone, while paragraph 1 would add a minimum shareholding period to the latter provisions.



Source: OECD. 2017. Applying the MLI Step-by-Step

4.3. THE APPLICATION OF ARMENIA'S CHOICES TO APPLY OPTIONAL AND ALTERNATIVE PROVISIONS

The MLI also incorporates a number of optional and alternative provisions to address a particular BEPS issue. Contrary to reservations, these provisions only apply when both Contracting Jurisdiction choose to apply the same optional and alternative provision, with the exception for Article 5 (Application of Methods for Elimination of Double Taxation), where the MLI allows for the asymmetrical application of the selected exemption method by each DTC partner, and Article 23(5) (Type of Arbitration Process) for the symmetrical application of the non-disclosure rule. See above under 4.

With respect to the asymmetrical application of a Party's choice of exemption method to its own residents under Article 5, the Explanatory Notes provides that some members of the *ad hoc* Group have expressed the concern that accepting such application across the board could disrupt the balance of certain bilateral tax treaties where the provision on the elimination of double taxation was the subject of bilateral compromise. To address these concerns, paragraph 8 allows a Party that does not choose to apply an Option under paragraph 1 of Article 5 to reserve the right for the entirety of Article 5 not to apply with respect to one or more identified Covered Tax Agreements, or with respect to all of its Covered Tax Agreements. Armenia has made such reservation under paragraph 8, as it follows the credit system for eliminating double taxation (see above in 3.2.1). Therefore, Article 5 does

not apply. Due to Armenia's reservation, an asymmetrical application of Article 5 in favor only of another Party is thus prevented for example in the case of the DTC with the Netherlands. In the other case of the DTC with India, Article 5 does not apply asymmetrically due to the absence of a notification of the DTC by India itself.

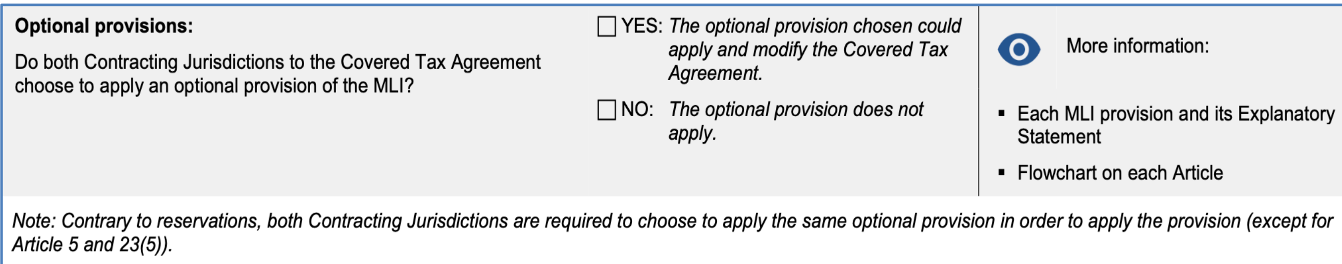
In the case of Article 7(8) to Article 7(13), the Simplified Limitation on Benefits provision (S-LOB), an asymmetrical application fails to, for example, Armenia's DTCs with India and Russia despite the choice for that alternative method made by those Parties. For such asymmetrical application of the S-LOB provision, the relevant compatibility clause of the MLI would require a notification of express agreement from Armenia which presently is absent. With specific regard to the DTC with India, it is noted that this non-application of the S-LOB provision of the MLI does not preclude in anyway the application of the present Limitation on benefits (LOB) provision of that DTC's Article 28.

With respect to Article 23(5) of the MLI, it should be noted that while Armenia has not made a reservation under paragraph 6, this provision will not be applicable across to all its DTCs. This is because Armenia has not chosen to apply the Articles 19 through 26 of the MLI concerning mandatory binding arbitration, therefore the non-disclosure rule will not be enforced where a DTC partner has opted to apply 23(5). It must be added that not opting in for the mandatory binding arbitration provisions of the MLI does not affect in any way Armenia's commitments to arbitration as agreed in some of its bilateral DTCs (i.e., with the Netherlands and Germany, respectively), nor the possibility for Armenia to agree arbitration in any future DTCs.

Armenia has chosen to apply the following optional and alternative provisions:

- paragraph 3 of Article 6 (Purpose of a Covered Tax Agreement);
- paragraph 4 of Article 7 (Prevention of Treaty Abuse);
- paragraph 4 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property), and
- Option A under paragraph 1 of Article 13 (Artificial Avoidance of PE Status through the Specific Activity Exemptions).

The above choices shall apply to Armenia's DTC covered under the MLI in the event that the other DTC partners have also made the same choices – and have notify the Depository of its choice of option accordingly.



Optional provisions: Do both Contracting Jurisdictions to the Covered Tax Agreement choose to apply an optional provision of the MLI?	☐ YES: *The optional provision chosen could apply and modify the Covered Tax Agreement.* ☐ NO: *The optional provision does not apply.*	More information: ▪ Each MLI provision and its Explanatory Statement ▪ Flowchart on each Article

Note: Contrary to reservations, both Contracting Jurisdictions are required to choose to apply the same optional provision in order to apply the provision (except for Article 5 and 23(5)).

Source: OECD. 2017. Applying the MLI Step-by-Step

4.4. NOTIFICATIONS

To ensure the operation of the MLI is clear and transparent, signatories to the MLI are required to notify to the OECD Depository the DTCs covered under the MLI, which subset of DTCs are within the defined scope of a reservation based on objective criteria, its choice among alternative provisions and, for some cases, a description of the consequences of a mismatch, and where a provision supersedes or modifies specific types of existing provisions of a DTC, specifying which DTCs containing such provisions. In this context, paragraph 15 of the Explanatory Statement emphasizes the expectation that Parties will exert their best efforts to truthfully identify all provisions that are within the objective scope of the compatibility clause.

The MLI contains different types of compatibility clauses that determine the method of modifications to DTCs:

- *Compatibility clauses that provide that the MLI applies "in place of" an existing provision of a DTC*. Where provisions of the MLI apply only "in place of" existing provisions, the MLI provisions are intended to replace the existing provisions described in the compatibility clauses. The MLI is not intended to replace provisions that are not described in the compatibility clauses.

- *Compatibility clauses that provide that the MLI "applies to" or "modifies" an existing provision of a DTC*. Where a provision of the MLI "applies to" or "modifies" existing provisions, the MLI provisions are intended to change the application of existing provisions without replacing them. Accordingly, these MLI provisions can only apply if there is an existing provision as described in the compatibility clause.

- *Compatibility clauses that provide that the MLI applies "in the absence of" an existing provision of a DTC*. Where provisions of the MLI apply only "in the absence of" existing provisions, the MLI provisions are intended to apply only when the DTCs do not contain the provisions described in the compatibility clauses.

- *Compatibility clauses that provide that the MLI applies "in place of or in the absence of" an existing provision of a DTC*. Where provisions of the MLI apply "in place of or in the absence of" existing provisions, the MLI provisions apply in all cases and

follow the "later in time" rule, by replacing existing provisions to the extent described in the compatibility clauses or, as a variation on that general rule of treaty law, by superseding the provisions of the DTC to the extent that they are incompatible with the relevant MLI provision.

The effect of notifications varies depending on the type of compatibility clause that applies to the specific provisions. In the event of a 'notification mismatch', i.e. where one DTC partner has notified an existing provision while the other not, or where both Parties made a different notification with respect to existing provisions in their MLI positions, the MLI provision as a rule does not apply to a DTC. However, there are exceptions to this rule. Some provisions in the MLI do not require notifications to apply (e.g. Article 13(4) and Article 15 of the MLI related to closely related enterprises).

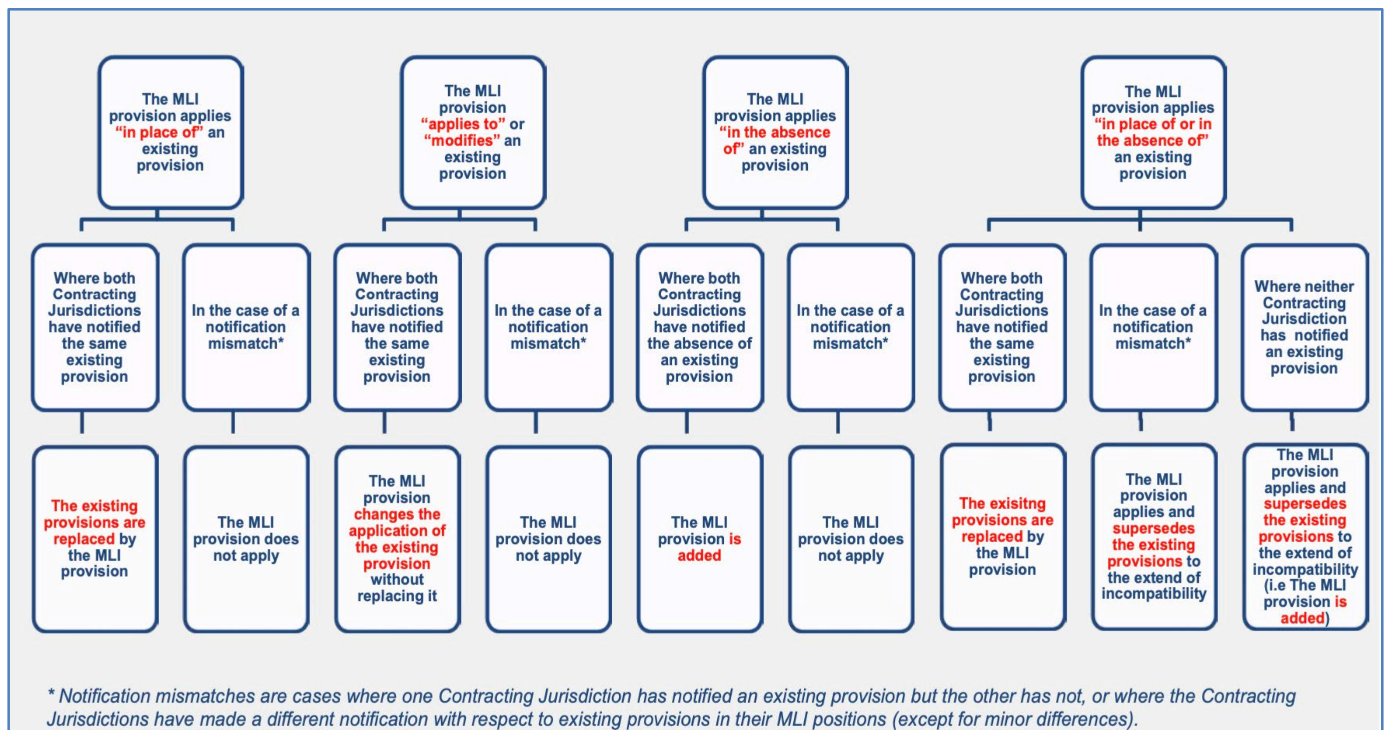
Additionally, in some instances where a notification fails from one or both DTC partners, a MLI provision may still apply to the extent a DTC holds a provision that is "incompatible" with that MLI provision. The specific MLI provision is then considered such important that it may supersede the "wrong" DTC provision even without Parties having expressed a wish so. For instance, in the cases of Armenia's DTCs with Cyprus, France, and the Russian Federation, Article 7(1) regarding the Principal Purposes Test (PPT) applies despite the failing of a notification by all Parties, since neither of these DTCs provide any general rules whatsoever against tax avoidance or treaty abuse let alone any rules compatible with the PPT.

In the case of Armenia's DTC with India, the PPT of Article 7(1) may similarly apply in the absence of Parties' notifications notwithstanding the DTC's present Article 28 providing for a Limitation of benefits rule (LOB). Since that Article 28 as a principle applies a set of tests based on objective facts and circumstances and takes no regard of any abusive intentions behind a transaction or arrangement - other than for the limited purposes of its 'safety net clause' of Article 28(5) -, it arguably does not fit the description of Article 7(2) of the MLI as a rule comparable to the PPT and replaced by it. Such combination of the PPT with a LOB rule is recognized as satisfying the Minimum Standard of BEPS Action 6. It is noted that India has added to its MLI position the declaration that it only agrees with the PPT as an interim measure in anticipation of re-negotiation of its DTCs.

Determining incompatibility may not always be straightforward, as hinted at in the Explanatory Statement (at par. 17), where conflict can arise not only from the text of existing DTC provisions but also from their application in individual cases. This judgment may necessitate a certain subjectivity that by itself can cause another type of mismatch, i.e., as to how either of DTC partners synthesizes MLI and DTC provisions. In such cases, mutual consultation under the Mutual Agreement Procedure (MAP) of the DTC is warranted, or if the matter remains unresolved, by a Conference of the MLI Parties as provided by Article 32 MLI.

Exceptionally, notification by all Parties of the application of one particular MLI provision may result non-application of another MLI provision despite that being notified, too, by all Parties. This is the case with Article 9(4) regarding gains from the alienation of shares in real estate companies overriding Article 9(1). While both provisions share a similar content, the text of Article 9(4) derives from the OECD Model Tax Convention and may for that reason have the Parties' preference. Article 9(4) thus applies, for instance, to Armenia's DTCs with France, India, and Russia.

Therefore, in identifying the actual effect of the MLI provisions on an individual DTC, the notifications made by each of the DTC partners, or their absence, are equally important as the DTC partners' general MLI positions.



Source: OECD. 2017. Applying the MLI Step-by-Step

It should be emphasized that signatories to the MLI retain the ability to introduce further modifications to their Covered Tax Agreements even after the MLI has become effective. By means of depositing a notification to the Depository, Parties can either replace a reservation with narrower scope or completely withdraw a reservation; however, Parties are not permitted to introduce new reservations. Furthermore, Parties have the possibility to issue additional notifications as needed.

5. WHEN THE MLI TAKES EFFECT IN ARMENIA

The date of entry into effect for each of Armenia's tax treaties modified by the MLI depends on the actions of the treaty partner jurisdiction, specifically when the

instruments of ratification, acceptance, or approval to the MLI have been deposited with the OECD.

The MLI will generally enter into force for a particular covered agreement on the first day of the month following a three-month period after both parties to the covered agreement have deposited their ratification instrument. Once in force, the provisions of the MLI will generally apply for a covered agreement from 1 January of the year following its entry into force in respect of withholding taxes. As for other taxes, the MLI typically becomes applicable for taxable periods beginning on or after the expiration of a 6-month period following the date of entry into force. Jurisdictions may choose an alternate date for the entry into effect of the provisions of the MLI.

Subject to these processes the positions adopted by each of Armenia's tax treaty partners, the earliest the MLI takes effect in Armenia is as follows:

- for withholding taxes, on income derived on or after 1 January 2024
- for all other taxes, for income years starting on or after 1 July 2024

Table 2 Impact of the MLI on Armenia's tax treaties (as of 1 April 2024)

No	Other Contracting Jurisdiction	Date of submission of reservations and notifications	Modified by the MLI?	Entry into effect with respect to taxes withheld (for Armenia)	Entry into effect with respect to other taxes (for Armenia)
1	Austria	22-09-2017	Yes	01-01-2024	01-07-2024
2	Republic of Belarus	-	No	N/A	N/A
3	Belgium	26-06-2019	Yes	01-01-2024	01-07-2024
4	Bulgaria	16-09-2022	Yes	01-01-2024	01-07-2024
5	Canada	29-08-2019	Yes	01-01-2024	01-07-2024
6	China (People's Republic of)	25-05-2022	Yes	01-01-2024	01-07-2024
7	Croatia	18-02-2021	Yes	01-01-2024	01-07-2024
8	Cyprus	23-01-2020	Yes	01-01-2024	01-07-2024
9	Czech Republic	13-05-2020	Yes	01-01-2024	01-07-2024
10	Denmark	30-09-2019	No*	N/A	N/A
11	Estonia	15-01-2021	Yes	No notification	No notification
12	Finland	25-02-2019	Yes	01-01-2024	01-07-2024
13	France	26-09-2018	Yes	01-01-2024	01-07-2024
14	Georgia	29-03-2019	No*	N/A	N/A
15	Germany	18-12-2020	No*	N/A	N/A
16	Greece	30-03-2021	Yes	01-01-2024	01-07-2024
17	Hungary	25-03-2021	Yes	01-01-2024	01-07-2024
18	India	25-06-2019	Yes	01-01-2024	01-07-2024
19	Indonesia	28-04-2020	Yes	No notification	No notification
20	Iran	-	No	N/A	N/A
21	Ireland	29-01-2019	Yes	01-01-2024	01-07-2024

22	Israel	13-09-2018	Yes	01-01-2024	01-07-2024
23	Italy	-	No	N/A	N/A
24	Kazakhstan	24-06-2020	Yes	01-01-2024	01-07-2024
25	Kuwait	-	No	N/A	N/A
26	Kyrgyzstan	-	No	N/A	N/A
27	Latvia	29-10-2019	Yes	01-01-2024	01-07-2024
28	Lebanon	-	No	N/A	N/A
29	Lithuania	11-09-2018	Yes	01-01-2024	01-07-2024
30	Luxembourg	09-04-2019	Yes	01-01-2024	01-07-2024
31	Malta	18-12-2018	No*	N/A	N/A
32	Moldova	-	No	N/A	N/A
33	Netherlands	29-03-2019	Yes	01-01-2024	01-07-2024
34	Poland	23-01-2018	Yes	01-01-2024	01-07-2024
35	Qatar	23-12-2019	Yes	01-01-2024	01-07-2024
36	Romania	28-02-2022	Yes	01-01-2025	10-08-2024
37	Russian Federation	18-06-2019	Yes	01-01-2025	16-08-2024
38	Serbia	05-06-2018	Yes	01-01-2024	01-07-2024
39	Singapore	21-12-2021	No*	N/A	N/A
40	Slovak Republic	20-09-2018	No*	N/A	N/A
41	Slovenia	22-03-2018	Yes	01-01-2024	01-07-2024
42	Spain	28-09-2021	Yes	No notification	No notification
43	Sweden	22-06-2018	Yes	No notification	No notification
44	Switzerland	29-08-2019	No*	N/A	N/A
45	Syrian Arab Republic	-	No	N/A	N/A
46	Tajikistan	-	No	N/A	N/A
47	Thailand	31-03-2022	Yes	01-01-2024	01-07-2024
48	Turkmenistan	-	No	N/A	N/A
49	Ukraine	08-08-2019	Yes	01-01-2024	01-07-2024
50	United Arab Emirates	29-05-2019	Yes	01-01-2024	01-07-2024
51	United Kingdom	29-06-2018	Yes	01-01-2024	01-07-2024

* Denmark, Georgia, Germany, Malta, Singapore, Slovak Republic, and Switzerland have excluded Armenia from their list of agreements covered by the Convention (status as of 1 December 2023).

6. SYNTHESIZED TEXTS

While not a prerequisite for the application of the MLI, the Explanatory Statement to the MLI recognizes that for internal purposes, countries may wish to develop consolidated versions of their Covered Tax Agreements as modified by the Convention.

Armenia will publish on an ongoing basis synthesized text for each treaty partner. A synthesized text presents the following in a single document:

- the text of the tax treaty, which is modified by the MLI, including the text of amending instruments such as protocols;

- the provisions of the MLI that have an effect on the tax treaty as a result of the interaction of the MLI positions of the jurisdictions, and
- the dates on which the provisions of the MLI take effect for the tax treaty.

The synthesized texts are developed to facilitate the interpretation and application of the treaties as modified by the MLI, but they do not constitute a source of law. The authentic legal text of the tax treaties and the MLI take precedence and remain the legal texts applicable.

The method of synthetization closely adheres to the guidelines outlines in the OECD's Guidance for the development of synthesized texts (November 2018), available at: https://www.oecd.org/tax/treaties/beps-mli-guidance-for-the-development-of-synthesised-texts.pdf.

7. USEFUL LINKS

1. The text of the MLI and the positions adopted by the MLI signatories can be found on the OECD website. The OECD has also published an Explanatory statement to the MLI and toolkits to facilitate its understanding and application.