

# Rödl & Partner

## NEWSFLASH SINGAPORE

## NEW DISCOVERIES

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## → Malaysia-Singapore Double Taxation Agreement (DTA)

### Details of the changes to the Malaysia-Singapore DTA by the Multilateral Instrument (MLI) published

In line with Singapore's and Malaysia's commitment to implement the minimum standard on preventing treaty abuse, Singapore and Malaysia both signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (known as the MLI).

The amendments made by the MLI to the Malaysia-Singapore DTA took effect on 1 June 2021; and the government of Singapore published a document containing details of the amendments to the Malaysia-Singapore DTA.

#### Effects of the MLI to the Malaysia-Singapore DTA

- The preamble of the DTA is updated such that the DTA is intended to eliminate double taxation with respect to the taxes covered by this DTA, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this DTA for the indirect benefit of residents of third jurisdictions);
- Amendment of Article 25 (Mutual Agreement Procedure), whereby the words "any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States" have been inserted immediately after the words "not in accordance with the Agreement";
- New Article 27A (Prevention of Treaty Abuse) which states that "notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement";

The date on which the MLI will enter into effect depends on the taxes, i.e. with respect to (a) taxes withheld at source, paid, deemed paid or liable to be paid (whichever is the earliest), on or after 1 January 2022; and (b) taxes other than those withheld at source, where the income is derived or received in a basis period beginning on or after 1 December 2021.

#### Our view

The application of the MLI provisions in relation to the Malaysia-Singapore DTA is limited. This is because in evaluating the extent of modification of the MLI under the Malaysia-Singapore DTA, Singapore's MLI position needs to be compared to the MLI position taken by its counterparty, i.e. Malaysia. In other words, both Singapore and Malaysia need to accept the same position in order for the MLI position to apply under the Malaysia-Singapore DTA. Positions under the MLI that were not accepted by Singapore largely center around the widening of the scope for permanent establishment ("PE"); and anti-fragmentation rules.

Both, Singapore and Malaysia have adopted the Principal Purpose Test ("PPT") to prevent treaty abuse. Under the PPT, treaty benefits will be denied if it is "reasonable to conclude" from the facts that "the principal purpose or one of the principal purposes" of entering into a transactions or an arrangement was to obtain such tax benefits (unless the transaction is in accordance with the object and purpose of the treaty).

In this regard, taxpayers should nevertheless keep this overarching rule in mind with respect to cross border transactions between Malaysia and Singapore, especially where treaty benefits are relied on. It is also important to review existing structures to ensure that any potential tax risk can be mitigated.

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