Federal Executive Council approves Nigeria's inclusion as a signatory to the OECD's Multilateral Instrument

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Introduction

On 14 June 2017, Nigeria's Federal Executive Council (FEC) approved a memo submitted by the Minister of Finance seeking Nigeria's inclusion as a signatory to the OECD's *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* ("Multilateral Instrument" or "MLI").

FEC's approval implies that Nigeria is now closer to joining 68 other signatories to the MLI. The MLI aims to automatically amend existing bilateral treaties to include measures that tackle base erosion and profit shifting (BEPS) through tax treaties.

The OECD estimates that, globally, between USD100-240 billion in tax revenue is lost annually due to BEPS. It is believed that the changes resulting from the MLI will protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to low or no-tax jurisdictions.

The Multilateral Instrument

The MLI was developed as part of Action 15 of the OECD and G20's Base Erosion and Profit Shifting (BEPS) project. The MLI aims to facilitate the swift implementation of the treaty related measures for preventing BEPS.

Because of the huge number of existing treaties and the amount of resources and time it would take to amend the treaties individually, the MLI provides an alternative which will implement agreed treaty measures over a reasonably shorter period of time.

The MLI includes treaty measures on reducing BEPS through the:

- granting of treaty benefits in inappropriate circumstances;
- use of hybrid mismatch arrangements; and
- artificial avoidance through permanent establishment status.

It also includes measures for improving the effectiveness of dispute resolution mechanisms.

The MLI includes both minimum measures, which are compulsory for all signatories, and additional measures which are optional.

The takeaway

The FEC approval signals the start of the process whereby Nigeria will update its existing bilateral treaties to include safeguards for minimising BEPS.

A ratification by the National assembly will be required for the MLI to enter into force in Nigeria. The changes to specific double tax treaties can then take effect for treaties where the treaty partner has also ratified the MLI. According to the OECD, the first modifications to tax treaties through the MLI will likely take effect from 2018.

The FEC's approval is another demonstration of Nigeria's commitment to implementing the BEPS recommendations.

Some taxpayers who currently enjoy certain treaty benefits may face the risk of losing some of these benefits. Hence it is important to proactively assess the impact which the MLI driven treaty changes could have on them.