

# Multilateral convention on implementation of BEPS Plan signed

August 18 2017 | Contributed by [Gorodissky & Partners](#)

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## Introduction

On June 7 2017 Russia, alongside 68 other states and jurisdictions, signed the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), which was developed to implement Action 15 of the BEPS Plan.

The convention contains provisions that are binding for each signatory. It also contains numerous optional provisions, the application of which with respect to a particular double tax treaty (DTT) is at the discretion of each party to the DTT.

## Binding provisions

The provisions that are binding on all signatory countries (including Russia) include the following:

- DTTs should not be applied to parties that use DTTs for tax evasion.
- The use of a DTT's preferential provisions is limited if the main purpose is to receive such benefits (the so-called 'principal purpose test').
- Taxpayers may independently initiate a mutual agreement procedure by asking the competent authorities of a contracting state to resolve disputes regarding the application of a DTT's provisions.

## Optional provisions

The optional provisions may be applied in full, partially or not at all. Russia has agreed to the majority of such provisions, potentially tightening existing DTTs. The most important of these provisions include the following.

### *Preferential provisions*

To benefit from a DTT's preferential provisions, the party applying for such benefits must be listed as a qualified party in the convention. Thus, the convention excludes the following parties from being entitled to benefit from the preferential provisions of a DTT:

- holding companies; and
- companies carrying out intra-group administration, investment or financing (with the exception of banks, insurers and professional stock market participants).

Parties not included in this list may, in practice, be restricted in their ability to benefit from such provisions. In order to benefit from the preferential provisions of a DTT, such parties must provide evidence that the main purpose of their establishment or the undertaking of their operations was not

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to receive DTT benefits (ie, they must perform the principal purpose test).

### ***Reduced rate of taxation of dividends***

To apply a reduced rate of taxation of dividends, the ownership criteria, including the possession of a certain amount of capital, must be complied with within the 365 days preceding the date of the dividend payment.

### ***Income from alienation of shares***

Income from the alienation of shares of organisations whose asset value is represented mainly by immovable property should be taxed in the country where the immovable property is located if the value of shares was directly or indirectly represented primarily by immovable property at any time during the 365 days preceding the sale of such shares.

### ***Permanent representation***

The concept of 'permanent representation' has been expanded and refined:

- The definition of 'permanent representation' with regard to an agent has been expanded – a dependent agent forms a permanent representation not only if it signs contracts on behalf of a company, but also if it plays an essential role in their conclusion.
- The definition of preparatory and support activities has been narrowed.
- It is prohibited to split construction contracts in order to avoid the application of the time criterion regarding the construction site's lifetime, during which it cannot be recognised as a permanent representation.

### **Application**

According to the Russian authorities' decision, the convention will apply to 66 DTTs, including those with Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Cyprus, the Czech Republic, Denmark, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Luxembourg, the Netherlands, Norway, Saudi Arabia, Spain, Switzerland, Turkey, Ukraine, the United Arab Emirates, the United Kingdom and the United States.

The mandatory provisions of the convention, which Russia has acceded to, will apply to all selected DTTs once the convention has been ratified. The application of the convention's optional provisions will depend on the decision of the partner countries. Thus, the articles of the convention to which Russia has acceded may be applied in relation to a DTT with another state if it has not expressed a position on the non-application of this article. Otherwise, the changes will not be applied. In this regard, Russia's tightening of the DTT provisions may be limited by the approach of the partner countries.

### **Ratification**

The convention will come into force in Russia after its ratification. Ratification will be a serious step towards implementing the measures envisaged in the BEPS Plan, which will change the existing DTT system and have a significant impact on the functioning of international groups of companies in Russia.

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