

to constitute covered tax agreements. However, it should be noted that jurisdictions such as the USA and Brazil have not signed the MLI and therefore, despite being included on South Africa's list, will not constitute covered tax agreements.

South Africa has not elected that its double tax agreements with Germany, Grenada, Malawi, Sierra Leone or Zambia constitute covered tax agreements. It is interesting in this regard that South Africa's double tax agreement with Germany will not constitute a covered tax agreement, despite Germany constituting a significant trading partner of South Africa. Germany has designated relatively few of its double tax agreements as covered tax agreements.

South Africa has yet to deposit its instrument of ratification, acceptance or approval of the MLI. Once it does so, the MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by South Africa of its instrument of ratification.

Then, in order for the provisions of the MLI to take effect with respect to a specific covered tax agreement, it is necessary for both parties to the covered tax agreement to have deposited their instruments of ratification, acceptance or approval with the OECD, and for the relevant time period to have passed in order for the MLI to enter into effect.

In respect of a specific covered tax agreement, the provisions of the MLI apply as follows:

- with respect to taxes withheld at source, the MLI will have effect from the first day of the next calendar year that begins on or after the latest of the dates on which the MLI enters into force for the contracting jurisdictions to a specific covered tax agreement;
- with respect to all other taxes, the MLI will apply with respect to taxable periods (years of assessment) beginning on or after the expiration of a period of six calendar months (or a shorter period if the contracting jurisdictions agree) from the latest of the dates on which the MLI enters into force in respect of the specific covered tax agreement.

Ratification of a double tax agreement takes place by the South African Parliament. The relevant double tax agreement is then published in a *Government Gazette* and has a specific date of entry into force specified in such double tax agreement. It is likely that the same ratification process will take place in respect of the MLI, ie as set out in terms of section 108(2) of the Income Tax Act, 58 of 1962, as amended.

Once the ratification process has been completed, it is then necessary to analyse each covered tax agreement with South Africa's treaty partners and test which of the alternatives or optional provisions have been chosen by the respective jurisdictions.

Minimum standard

The MLI contains certain treaty-related minimum standards that were agreed as part of the BEPS package in November 2015, and to which all countries and jurisdictions have committed themselves. The minimum standards relate to the prevention of treaty abuse (BEPS Action 6) and the improvement of dispute resolution (BEPS Action 14).

Where an MLI provision reflects an agreed BEPS minimum standard, South Africa and all other jurisdictions must meet the minimum standard when signing the MLI. However certain elements of these minimum standards can be met in different ways in terms of the MLI.

Outside of the minimum standards, jurisdictions can opt in or opt out of the various MLI provisions. Signatories can also amend their MLI positions prior to ratification. Even after ratification, parties can choose to opt in with respect to certain provisions or to withdraw certain reservations they have made.

The MLI contains six Articles which address treaty abuse (BEPS Action 6). Two of these reflect the Action 6 minimum standard on treaty abuse and the other four provisions target specific avoidance strategies. These six articles are Articles 6 to 11 of the MLI, and fall under the heading 'Part III: Treaty Abuse'. Articles 6 and 7 of the MLI constitute the minimum standard in relation to treaty abuse.

'Part V: Improving Dispute Resolution' constitutes