



Cabinet

Summary

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Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting: Approval for Signature and Ratification

Portfolio	Revenue
Purpose	This paper seeks approval of the text and agreement to sign the <i>Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting</i> (the MLI).
Previous Consideration	In February 2017, EGI noted that there is significant global media and political concern about base erosion and profit shifting (BEPS), and agreed to the release of an officials' issues paper on <i>New Zealand's Implementation of the Multilateral Convention to Prevent BEPS</i> [EGI-17-MIN-0005].
Summary	<p>Double tax agreements (DTAs) are bilateral international treaties which are designed to reduce tax impediments to cross-border services, trade, and investment without creating opportunities for non-taxation or reduced taxation through tax avoidance or evasion. DTAs also enable tax administrations to support each other in the detection and prevention of tax evasion and avoidance.</p> <p>The MLI (attached as Annex 1) proposes to quickly and efficiently amend a significant number of DTAs to take into account new treaty standards relating to treaty abuse and dispute resolution resulting from the OECD and G20's 15 point Action Plan on base erosion and profit shifting. New Zealand's MLI will cover 34 DTAs (i.e. those New Zealand holds with jurisdictions who are also signing the MLI). New Zealand's MLI position is discussed in paragraphs 18-24.</p> <p>Submissions on the officials' issues paper concerning BEPS identified issues relating to the need for a New Zealand-specific approach (as the MLI is broadly drafted), the need for additional guidance and administrative resources to help taxpayers apply DTAs as modified by the MLI, and domestic law updates to support a smooth implementation of the MLI (discussed in paragraph 29).</p>
Regulatory Impact Analysis	The Regulatory Impact Analysis and tax strategy teams at the Treasury consider that the National Impact Statement meets quality assurance criteria.
Baseline Implications	Data limitations prevent an accurate estimation of the impact on net tax revenue, though it is expected that the overall impact will be positive. There will be some administrative costs to IRD, which are expected to be small.

Legislative Implications	The Income Tax Act 2007 provides for the regulation and giving of effect to DTAs. An Order in Council will give effect to the MLI.
Timing Issues	The MLI signing ceremony is 7 June 2017. An Instrument of Full Powers will need be obtained from the Minister of Foreign Affairs to enable the Minister of Revenue to sign the MLI.
Announcement	National communications relating to this matter will be managed by the office of the Minister of Revenue. The text of the MLI, New Zealand's notifications and reservations, and the NIA will be tabled in the House of Representatives for Parliamentary treaty examination, as the MLI it is subject to ratification.
Proactive Release	None proposed.
Consultation	Paper prepared by Inland Revenue. MBIE and MFAT were consulted. The Minister of Revenue indicates that discussion is not required with the government caucus, or with other parties represented in Parliament.

The Minister of Revenue recommends that Cabinet:

- 1 note that the Income Tax Act 2007 authorises the negotiation of, and giving effect to double tax agreements (DTAs) with other jurisdictions;
- 2 note that officials participated in the negotiation of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI), the text of which was formally adopted in November 2016;
- 3 note that the MLI will quickly and efficiently amend the majority of New Zealand's DTAs to include the recommended changes to tax treaties arising out of the OECD/G20 15 point Action Plan on base erosion and profit shifting;
- 4 approve the text of the MLI attached to the paper under CAB-17-SUB-0241 as Annex A, subject to any minor technical changes resulting from the process of translation or legal verification;
- 5 note that officials have finalised New Zealand's expected notifications and reservations in relation to the choices available in the MLI;
- 6 approve New Zealand's expected notifications and reservations attached to the paper under CAB-17-SUB-0241 as Annex B;
- 7 authorise the Minister of Finance and Minister of Revenue to approve any changes to the notifications and reservations as a result of developments in other jurisdictions' positions and any other minor technical changes;
- 8 agree that New Zealand sign the MLI;

- 9 note that an Instrument of Full Powers will need to be obtained from the Minister of Foreign Affairs to enable the Minister of Revenue to sign the MLI, and that the Ministry of Foreign Affairs and Trade will prepare this Instrument and arrange for its signature;
- 10 approve the extended National Interest Analysis (NIA) attached to the paper under CAB-17-SUB-0241 as Annex D;
- 11 note that the content of the NIA may change as a result of developments in other jurisdictions' positions between now and Parliamentary treaty examination;
- 12 note that the government will present any international treaty that is the subject of ratification to the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;
- 13 agree that, following signature, the text of the MLI, New Zealand's notifications and reservations, and the NIA be tabled in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;
- 14 note that the MLI will be incorporated into New Zealand domestic law through an Order in Council with overriding effect made pursuant to section BH 1 of the Income Tax Act 2007;
- 15 invite the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the Order in Council to give effect to the MLI, following signature and completion of the Parliamentary treaty examination process;
- 16 authorise officials, following signature, completion of the Parliamentary treaty examination process, and promulgation of the Order in Council, to bring the MLI into force by depositing New Zealand's instrument of ratification and list of confirmed notifications and reservations with the OECD Depository.

Jenny Vickers
for Secretary of the Cabinet

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