

Dual-Resident Companies

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1 Summary

This manual outlines the new rule under the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#) ('the MLI') regarding the determination of treaty residence of persons other than individuals, that are resident of more than one jurisdiction ('dual-resident companies'). The MLI came into force for Ireland on 1 May 2019.

2 Background

The MLI was ratified in the Finance Act 2018 and Ireland deposited its Instrument of Ratification with the OECD on 29 January 2019. In accordance with paragraph 2 of Article 34 (Entry into Force) of the MLI, the MLI entered **into force** for Ireland on 1 May 2019. On their entry **into effect**, the provisions of the MLI will modify the application of Ireland's Double Taxation Conventions (DTCs), with other jurisdictions that have also ratified the MLI, to implement tax treaty-related anti-BEPS measures, agreed under the OECD/G20 Project to tackle BEPS. The extent of modification of any particular DTC impacted by the MLI depends on the final positions adopted by [Ireland](#) and the treaty partner concerned and deposited with the OECD on ratification.

3 Tie-breaker rule for Dual-Resident Companies

Ireland opted for the new rule under Article 4 of the MLI in respect of the determination, for treaty purposes, of the residence of dual-resident companies ('the tie-breaker rule'). The tie-breaker rule provides that, in cases of corporate dual-residence, the competent authorities of the Contracting Jurisdictions will attempt to determine a sole jurisdiction of residence by mutual agreement having regard to that company's place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. Most of Ireland's existing DTCs follow the pre-2017 OECD Model Tax Convention rule for corporate dual residence and the sole jurisdiction of residence is determined using the place of effective management of the company.

Under the tie-breaker rule, a dual-resident company will lose its automatic single jurisdiction of residence status for treaty purposes that is based on place of effective management only. Instead, the competent authorities will endeavour to resolve the residence status by mutual agreement having regard to the relevant factors. If agreement cannot be reached on the residence status for treaty purposes, the company will only be entitled to treaty benefits to the extent that the competent authorities agree.

The tie-breaker rule will only take effect in a particular DTC where Ireland's treaty partner has ratified the MLI and has also opted for the same rule. Details of the jurisdictions which have ratified the MLI and their positions in relation to the tie-breaker rule can be found on the [MLI signatories](#) page on the OECD website.

4 Entry into Effect of the Tie-Breaker Rule

While the MLI entered **into force** for Ireland on 1 May 2019, the majority of the provisions of the MLI did not enter **into effect** on this date¹. In accordance with the rules set out in Article 35 (Entry into Effect) of the MLI, the provisions of the MLI will have effect:

- a) For taxes withheld at source, where the event giving rise to such taxes occurs on or after the first day of the next calendar year following the later of the dates on which the MLI entered into force for Ireland and its treaty partner; and
- b) For all other taxes, for taxable periods beginning on or after the expiration of a period of six calendar months from the later of the dates on which the MLI entered into force for Ireland and its treaty partner.

In respect of Ireland's treaty partners that ratified the MLI **before** Ireland², the provisions of the MLI will have effect in general:

- a) For taxes withheld at source, from 1 January 2020; and
- b) For all other taxes, for taxable periods beginning on or after 1 November 2019.

In respect of any of Ireland's DTCs, the tie-breaker rule will have effect **at the earliest** for taxable periods beginning on or after 1 November 2019. The date of ratification of the MLI by Ireland's treaty partner (and Article 35 (Entry into Effect) of the MLI as outlined above) should be examined in each case to determine the entry-into-effect date of the tie-breaker rule, where the treaty partner has opted for the new rule under Article 4 of the MLI.

¹ Article 16 of the MLI (Mutual Agreement Procedure) came into effect, in accordance with Article 35(4), on 1 May 2019 for DTCs where the MLI was already ratified by Ireland's treaty partner prior to this date.

² Namely, Australia, Austria, France, Isle of Man, Israel, Japan, Jersey, Lithuania, Malta, New Zealand, Poland, Serbia, Singapore, Slovak Republic, Slovenia, Sweden and the United Kingdom.

5 Application of the Tie-Breaker Rule

In accordance with the tie-breaker rule, the competent authorities must endeavour to resolve cases of dual residence by mutual agreement. For the competent authorities to consider a particular case, corporate taxpayers affected or potentially affected by dual residence under the Resident Article of a DTC on entry into effect of the tie-breaker rule, must initiate the mutual agreement procedure as provided for in the Mutual Agreement Procedure (MAP) Article of the relevant DTC. In general, following ratification of the MLI by both Ireland and its treaty partner, the MAP Article provides that a taxpayer may submit its case to the competent authority of **either** Contracting Jurisdiction. The relevant DTC, as modified by the MLI, should be consulted in each case.

6 Requests for the initiation of the MAP procedure

Where the taxpayer makes a MAP request to the Irish Competent Authority, the taxpayer should ensure that, in addition to following the published [MAP Guidelines](#) in respect of the initiation of the MAP, the application contains detailed information on the factors giving rise to its dual residence including, in particular, the following:

- (i) Details of dual-residency, referring to the laws of Ireland and the other jurisdiction and to the facts and circumstances giving rise to such dual-resident status;
- (ii) Determination of a single jurisdiction of residence under the pre-MLI corporate tie-breaker provisions of the relevant DTC and confirmation of that determination (if applicable);
- (iii) Details and analysis of issues foreseen in relation to the determination of residence under the post-MLI tie-breaker rule;
- (iv) Any other information, with supporting documentation, in relation to the surrounding facts and circumstances, or analysis of these, that may be relevant for the purposes of determining a sole residence for DTC purposes.

Requests to the Irish Competent Authority for the initiation of the MAP procedure should be made to:

**Director,
Tax Treaties Branch, International Tax Division,
Office of the Revenue Commissioners,
1st Floor, Treasury Building,
Dublin Castle,
Dublin 2,
DO2 F342.**