Senate Standing Committee on Foreign Affairs and International Trade

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Hand-Out

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Background:

As a result of the global financial crisis of 2008, many governments around the world were left in dire fiscal straits as the economy slowed and tax revenues plummeted. In 2013, the Organization for Economic Cooperation and Development (OECD) and the G20 began a reform effort called Base Erosion and Profit Shifting (BEPS) to inhibit aggressive international tax avoidance and concomitant revenue losses. The reform included 15 Actions that produced final reports in 2015 targeting different problem areas such as interest deductions and hybrid mistmatches.

With respect to these Actions, participating countries only collectively agreed to adopt four 'minimum standards' regarding preventing treaty shopping (Action 6), Country-by-Country Reporting (Action 13), fighting harmful tax practices (Action 5) and improving dispute resolution (Action 14). In some cases, countries have not fully agreed to implement all of the minimum standards. For instance, Canada fully committed to three of the minimum standards: the adoption of Country-by-Country Reporting, preventing treaty abuse and binding arbitration for dispute resolution. For Action 5, however, Canada has only agreed to implement the exchange of tax rulings and has not agreed to fully implement this minimum standard.

Canada also registered provisional reservations with respect to all other BEPS measures.

The Multilateral Convention for BEPS Measures:

In June 2017, Canada and over 70 countries signed the Multilateral Convention to Implement the Tax Treaty Measures to Prevent BEPS (referred to as the Multilateral Instrument or MLI). The MLI is intended to help countries modify their bilateral tax treaties to implement BEPS treaty reforms. It allows for the widespread and fast adoptions of these reforms in contrast to the time-consuming traditional route of amending each bilateral tax treaty through separate deals, which can take years or decades. The MLI allows countries to opt out of changing their tax treaties in areas where they claim it would unduly interfere with their tax policies.

The MLI will only modify bilateral tax treaties if both countries have signed the MLI. The United States has not signed and hence any MLI changes will not impact the Canada-United States tax treaty. If both bilateral tax treaty partners have signed then the actual text of the treaties will not be changed but the MLI will nevertheless modify the bilateral tax treaty (as long as both countries have adopted the MLI provisions).

As mentioned above, Canada has agreed to implement the BEPS minimum standards surrounding tax treaty abuse and binding arbitration for dispute resolution. In 2017, the

Department of Foreign Affairs, Trade and Development released a document that lists all Canadian tax treaties covered by the MLI along with a list of provisional reservations. Accordingly, even after Bill C-82 is enacted, Canada has only agreed to modify certain bilateral tax treaties (where both parties have signed the MLI) and then only to the extent of preventing tax treaty abuse and binding arbitration for dispute resolution (that, is Part III 'Treaty Abuse' and Part VI 'Arbitration' of the MLI). Notably, in certain bilateral tax treaties, Canada already strives to inhibit treaty abuse via 'limitation of benefits' clauses and has endorsed mandatory arbitration. For example, the Canada-United States tax treaty includes both of these approaches.

Due to the fact that Canada has inserted provisional reservations surrounding BEPS measures, the MLI will have little practical effect, at least in its early stages. The MLI will gain greater importance to the extent that Canada decides to adopt other BEPS provisions.

For more information on BEPS and the MLI, see Jinyan Li and Arthur Cockfield, *International Taxation in Canada* (LexisNexis, 4th ed., 2018).