Table of Contents

| Edi | tors | | v |
|------|----------|------------------------------------------------------------------|------------------|
| Cor | ntributo | e Multilateral Instrument | vii |
| Pre | face | | xix |
| | | **O* | |
| 1000 | APTER 1 | | |
| | _ | e Multilateral Instrument | |
| Rob | oin Dam | berger | 1 |
| 1 | Asses | sing the Scope of the Multilateral Instrument | 1 |
| 2 | | Scope of the Convention | 2 |
| | 2.1 | The Framework of Articles 1 and 2 of the MLI | 1 2 2 3 |
| | 2.2 | Notification Requirement | 3 |
| | 2.3 | Flexibility with Regard to the Substantive Provisions of the MLI | 4 |
| 3 | Agree | ement for the Avoidance of Double Taxation as Covered Tax | |
| | | ement X | 4 |
| | 3.1 | General Remarks | 4 |
| | 3.2 | Taxes on Income | 4 |
| | 3.3 | Income Tax Treaties | ϵ |
| | 3.4 | Multilateral Tax Treaties | 8 |
| 4 | Furth | er Potential Areas of Application | 10 |
| | 4.1 | General Remarks | 10 |
| | 4.2 | Tax Agreements on Estates and Inheritance and on Gifts | 10 |
| | 4.3 | Agreements for Diplomatic Relations and Immunity | 12 |
| 5 | Cont | racting Jurisdictions | 14 |
| | 5.1 | General Remarks | 14 |
| | 5.2 | States as Parties to the MLI | 14 |

| | 5.3 | Non-state Jurisdictions | 1 |
|-------|--------------|----------------------------------------------------------------|----|
| 6 | 5.4 Concl | Jurisdictions with Limited Recognition of Statehood | 1 |
| | Conci | usion | 1 |
| Сна | APTER 2 | | |
| Inte | erpretatio | on of Terms Used in the Multilateral Instrument | |
| Sve | tlana W | akounig | 2 |
| 1 | Introd | | 2 |
| 2 | Gener | al Interpretation | 22 |
| | 2.1 | The Vienna Convention on the Law of Treaties | 22 |
| | 2.2 | Explanatory Statement | 24 |
| 3 | | retation under the MLI | 25 |
| | 3.1 | Lessons to Be Learned from Article 3(2) of the OECD Model | 25 |
| 50200 | 3.2 | Article 2(2) of the MLI | 28 |
| 4 | | Defined in the MLI | 30 |
| | 4.1 | General Remarks | 30 |
| | 4.2 | Covered Tax Agreement | 31 |
| | 4.3 | Party | 31 |
| | 4.4 | Contracting Jurisdiction | 32 |
| | 4.5 | Signatory | 32 |
| | 4.6 | Qualified Person | 32 |
| _ | 4.7 | Other Definitions | 33 |
| 5 | | Not Defined in the MLI | 34 |
| | 5.1 | Theoretical Considerations | 34 |
| | 5.2 | Permanent Establishment | 35 |
| | 5.3 | Dividend | 36 |
| | 5.4 | Immovable Property | 38 |
| | 5.5 | Residence | 40 |
| 5 | Conclu | sion | 41 |
| | PTER 3 | $\mathcal{N}_{\mathcal{O}}$ | |
| Γhe | Relevan | ce of the Conference of the Parties for the Interpretation and | |
| Ame | endment | of the Multilateral Instrument | |
| Rapl | rael Holz | ringer | 43 |
| L | Setting | the Scene: The Conference of the Parties of the Multilateral | |
| | | nent and Legal Problems | 43 |
| 2 | | nference of the Parties of the MLI under Review | 44 |
| | 2.1 | The Legal Character of the Conference of the Parties and Other | 44 |
| | | Governing Bodies of the MLI | 44 |
| | 2.2 | Parties to the Convention and the Conference of the Parties | 45 |
| | 2.3 | The Tasks of the Conference of the Parties and Other Governing | 13 |
| | | Bodies of the MLI | 49 |
| | | | 1 |

| | 2.4 | Procedural Aspects: The Conference of the Parties between | |
|-----------|-----------------------------------------------------------|---------------------------------------------------------------------------|----------|
| | | Request and Outcome | 50 |
| | 2.5 | General Aspects of Treaty Interpretation in International Law | 51 |
| | 2.6 | Specific Interpretational Aspects of the MLI | 53 |
| | 2.7 | General Aspects of Treaty Amendments in International Law | 56 |
| | 2.8 | Specific Issues Regarding Amendments of the MLI | 57 |
| 3 | The Co | nference of the Parties and Its Relevance for the Interpretation | |
| | | nendments of the MLI | 58 |
| | 3.1 | General Aspects Concerning the Relevance of the Conference of the Parties | 58 |
| | 3.2 | Evaluating the Relevance of the Conference of the Parties for | |
| | 2. 10 . 10. 10. 10. 10. 10. 10. 10. 10. 10. 10 | Amendments of the MLI | 60 |
| | 3.3 | Evaluating the Relevance of the Conference of the Parties for the | 00 |
| | 0.0 | Interpretation of the MLI | 61 |
| 4 | Conclu | | 64 |
| "I | Conciu | 31011 | 04 |
| Снар | ΓER 4 | | |
| | CONTRACT DO | nguages and Official Translations of the Multilateral Instrument | |
| | | Tax Agreements | |
| | | & Jean-Philippe Van West | 67 |
| 305 | Screacit | a search taleppe vait west | 07 |
| 1 | Introdu | action | 67 |
| 2 | | nces to the Issue of the Authentic Languages During the | ٠. |
| | | pment Process | 68 |
| | 2.1 | | 69 |
| | 2.2 | BEPS Action 15: Discussion Draft and Comments Received | 0) |
| | 2.2 | on the Discussion Draft | 70 |
| | 2.3 | Conclusion | |
| 3 | | ngual Treaties and Language Issues: General Practice | 71 71 |
| 3 | 3.1 | | 11 |
| | 3.1 | The Authentic Language(s) of Multilateral Treaties: A Brief | |
| | 2.2 | | 71 |
| | 3.2 | Some Examples of the Authentic Language(s) of Multilateral | 1202 |
| | | | 73 |
| | | 3.2.1 Multilateral Treaties Having a Single Authentic Language | 73 |
| | | 3.2.2 Multilateral Treaties Having Two or More Equally | |
| | | | 73 |
| | | | 73 |
| | | 3.2.2.2 Authentication of Other Language Versions | 74 |
| | | 3.2.2.3 A Special Case: The European Union | 74 |
| | | 3.2.3 Official Texts and Official Translations | 75 |
| | 3.3 | The Interpretation of Multilingual Treaties: Article 33 of the Vienna | |
| | | | 75 |
| | 3.4 | | 78 |
| 4 | | thentic Languages of the MLI and Tax Treaties | 78 |
| | 4 1 | Overview of the Most Common Practices in Tax Treaties | 78 |
| | | | |

| 4.2 | danguages of the MLI, Flench and English | 80 | | 4.2.1 Issues with Regard to the Minimum Standards | 122 |
|-----------|----------------------------------------------------------------------------------------------|-----|-----------------------------------------|--------------------------------------------------------------------|-----|
| 4.3 | Interpretation of Tax Treaties Modified by the MLI | 80 | | 4.2.2 Issues in the Positioning of Provisions | 124 |
| 4.4 | Tigreement and conference of the Parties | 83 | | 4.2.3 Issues in Articles with Options | |
| 4.5 | Must an Interpreter Consult Both the French and English | | | | 126 |
| | Language Versions? | 84 | | 4.2.4 Conflict in Conflict Clauses | 127 |
| 4.6 | Table value be diven to the Figure | 01 | 5 | Relationship with Other Treaties and Future Treaties | 128 |
| | versions if There is a Divergence? | 84 | | 5.1 Relationship with Other Treaties | 128 |
| 4.7 | Would a Single Authentic Language Have Been Better? | 85 | | 5.1.1 Interaction with EU Law | 128 |
| 5 Co | nclusion | 86 | | 5.1.2 Interaction with International Investment Treaties | 131 |
| | | 00 | | 5.1.3 Interaction with Trade Agreements | 132 |
| CHAPTER . | 5 | | | 5.2 Interaction with Future Treaties | 133 |
| The Lega | al Relevance of the Minimum Standard in the OECD/BEPS Project | | 6 | Conclusion | 135 |
| Andreas | Langer | 20 | 7 | Annexe | 137 |
| | | 89 | 1 | | |
| | neral Remarks | 89 | Сна | PTER 7 | |
| 2 The | e Content of the Minimum Standard in the MLI | 91 | Opt | ions under the Multilateral Instrument | |
| 2.1 | | 91 | Alex | xandra Miladinovic & Alexander Rust | 139 |
| 2.2 | The Minimum Standard in Article 14 of the MLI | | | | |
| 2.3 | The Minimum Standard in Article 6 of the MLI | 94 | 1 | Introduction | 139 |
| 2.4 | The Minimum Standard in Article 17 of the MLI | 97 | 2 | Different Types of Options | 140 |
| 2.5 | Intermediate Results and Limitation on the Implementation | 98 | | 2.1 Types of Options According to the BEPS Action 15 Final Report | 140 |
| | of the MLI's Minimum Standard | 0.0 | N | 2.1.1 BEPS Action 15 Final Report | 140 |
| 3 Refe | erences to the Minimum Standard as Interpretation Aid? | 99 | 15 | 2.1.2 Opt-Out Clauses | 141 |
| 3.1 | Legal Relevance of the OECD/G20 BEPS Package When | 101 | | 2.1.3 Opt-In Clauses | 142 |
| | Interpreting the Minimum Standard of the MLI | | | 2.1.4 Alternative Provisions | 144 |
| 3.2 | The BEPS Final Reports as Interpretation Aids under | 101 | | 2.1.5 Analysis and Suitability of These Categories | 146 |
| | Article 31(2) of the Vienna Convention | 1 2 | | 2.2 Classification of the Options According to the Articles of the | |
| 3.3 | The BEPS Final Reports as Special Meaning | 102 | | OECD Model Convention | 147 |
| 3,4 | Legal Relevance of a Revised Michael Co. | 103 | | 2.3 Classification of the Options According to Their Purpose | 148 |
| 5.1 | Legal Relevance of a Revised Minimum Standard in the | | | 2.4 Classification of the Options According to Legal Consequences | 152 |
| 4 Lega | OECD/BEPS Package When Interpreting the MLI | 104 | 3 | Exercise of Options | 156 |
| Pack | al Relevance of the Minimum Standard of the OECD/G20 BEPS kage for Bilateral Negotiations | | | 3.1 Notifications and Reservations | 156 |
| 5 Cone | clusion | 106 | | 3.2 Timing of the Exercise of the Option | 158 |
| 5 Com | Clusion | 109 | | 3.3 Reversibility of Options | 159 |
| CHAPTER 6 | , | | | 3.3.1 Legitimate Interests to Reverse Options | |
| | | | | 3.3.2 First-Time Exercise of Options after Conclusion | 159 |
| Compatibi | ionship Between Tax Treaties and the Multilateral Instrument: | | | | 159 |
| Sriram Co | ility Clauses in the Multilateral Instrument vind & Pasquale Pistone | | | 3.3.3 Change or Replacement of Options after Conclusion | 162 |
| Strain GO | vata & Pasquate Pistone | 111 | | 3.3.4 Withdrawal of Options after Conclusion | 163 |
| 1 Intro | oduction | | 4 | Conclusion | 164 |
| | MLI and Tax Treaties | 111 | | 0 | |
| | Flict and Compatibility Clauses | 112 | | PTER 8 | |
| | patibility Clauses in the MLI | 115 | 120000000000000000000000000000000000000 | ervations to the Multilateral Instrument | |
| 4.1 | | 118 | Ben _. | jamin Walker | 165 |
| | The Format of Compatibility Clauses in the MLI | 118 | 1 | Indus Justina | در. |
| 4.2 | Issues with Regard to Compatibility Clauses in the MLI | 122 | 1 | Introduction | 165 |
| | | | 2 | Background | 165 |

| | 2 1 | C | | | |
|------|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--|--|
| | 2.1 | Generally | 165 | | |
| | 2.2 | What Constitutes a Reservation? | 166 | | |
| | 2.3 | History | 167 | | |
| 2 | 2.4 Vienna Convention on the Law of Treaties | | | | |
| 3 | | rvation Article | 168 | | |
| | 3.1 | Rationale of the MLI | 168 | | |
| | 3.2 | Reservations under the MLI | 169 | | |
| | 3.3 | Scope | 169 | | |
| | 3.4 | Categories of Reservations | 170 | | |
| | | 3.4.1 Minimum Standard Reservations | 170 | | |
| | | 3.4.2 Non-minimum Standard Reservations | 173 | | |
| | | 3.4.3 Arbitration Reservations | 176 | | |
| | | 3.4.4 Other Reservations | 178 | | |
| | | 3.4.5 Summary of Reservations | 178 | | |
| | 3.5 | Legal Effect of a Reservation | 178 | | |
| | | 3.5.1 Legal Consequences of Impermissible Reservations | 179 | | |
| | 3.6 | Timing of a Reservation | 181 | | |
| | 3.7 | Notification of a Reservation | 183 | | |
| | 3.8 | Later Withdrawal | 186 | | |
| 4 | Concl | usion | 189 | | |
| Vers | sions of Stiane 2 | ns According to the Multilateral Instrument and Consolidated Tax Treaties Zöhrer | 191 | | |
| | | | 171 | | |
| L | Ensur | ing Legal Certainty | 191 | | |
| 2 | | cations | 192 | | |
| | 2.1 | Scope | 192 | | |
| | 2.2 | Dispatch and Receipt of Notifications | 194 | | |
| | | 2.2.1 Dispatch of Notifications | 194 | | |
| | 121 0 | 2.2.2 Receipt of Notifications | 196 | | |
| | 2.3 | cations Scope Dispatch and Receipt of Notifications 2.2.1 Dispatch of Notifications 2.2.2 Receipt of Notifications Form and Content of Notifications | 197 | | |
| | | 2.3.1 Form of Notifications | 197 | | |
| | | 2.3.2 Content of Notifications | 198 | | |
| | 2.4 | Role of the Depositary | 201 | | |
| | Consolidated Version | | | | |
| | 3.1 | Classification of Consolidated Versions | 202 | | |
| | 3.2 | Benefits of Consolidated Versions | 203 | | |
| | 3.3 | Challenges Associated with Developing Consolidated Versions | 205 | | |
| | 3.4 | Potential Legal and Practical Difficulties | 207 | | |
| | Conclu | ISION | 209 | | |

| Con | | es of Wi | ithdrawal from or Termination of the Multilateral | |
|-----|----------|-----------|------------------------------------------------------|-----|
| nst | rument | i sav w | | |
| Ben | edikt Hö | rtenhube | er | 211 |
| 1 | Introd | uction | | 211 |
| 2 | Impler | nentatio | n and Effectiveness of the MLI | 212 |
| | 2.1 | Negotia | ation and Signature | 212 |
| | 2.2 | Entry i | nto Force | 213 |
| | 2.3 | Entry i | nto Effect | 215 |
| | 2.4 | Relatio | nship Between the MLI and Covered Tax Agreements | 216 |
| 3 | Withda | rawal fro | om the MLI | 217 |
| | 3.1 | Specific | c Provision in Article 37 of the MLI | 217 |
| | 3.2 | Proced | ural Requirements | 218 |
| | | 3.2.1 | Any Party | 218 |
| | | 3.2.2 | At Any Time | 218 |
| | ~ | 3.2.3 | Notification Addressed to the Depositary | 218 |
| | ~O | 3.2.4 | Effective Date of the Withdrawal | 219 |
| | 3.3 | Consec | quences of a Withdrawal | 219 |
| C | 8 | 3.3.1 | Covered Tax Agreement Shall Remain as Modified | |
| | , | | by the MLI | 220 |
| • | | 3.3.2 | Withdrawal Will Not Affect Contractual Duties in the | |
| | | | Covered Tax Agreement Between the Contracting | |
| | | | Jurisdictions | 220 |
| | | 3.3.3 | Effects of the Withdrawal Are Forward-Looking | |
| | | | (Ex Nunc) | 221 |
| | | 3.3.4 | Future Changes to the MLI Itself Will Not Affect the | |
| | | | Leaving Party's Tax Agreements | 222 |
| | | 3.3.5 | Entry into Effect Pursuant to Article 35 of the MLI | |
| | | | Is Not Decisive | 222 |
| | | 3.3.6 | Termination of Rights and Obligations under the MLI | 223 |
| | | 3.3.7 | Withdrawal Will Not Terminate the MLI | 223 |
| | | 3.3.8 | Summary of Main Findings | 224 |
| | 3.4 | Examp | le | 224 |
| 1 | Termin | nation of | the MLI | 225 |
| | 4.1 | Absend | ce of Specific Provisions in the MLI | 225 |
| | 4.2 | Fundar | mental Principles of the Vienna Convention | 225 |
| | | 4.2.1 | Termination in Conformity with the Provisions of the | |
| | | | Treaty | 226 |
| | | 4.2.2 | Termination of the Treaty by Consent of All Parties | 226 |
| | | 4.2.3 | Treaty Containing No Provision Regarding Termination | 227 |
| | | 4.2.4 | Brief Summary | 228 |
| | 13 | Passon | ne for the Termination | 220 |

Table of Contents

| | | 4.3.1 | Necessary Number of Contracting Parties: Article 55 | |
|-------|----------|-----------|--------------------------------------------------------|-------|
| | | | of the Vienna Convention | 228 |
| | | 4.3.2 | Conclusion of a Later Convention: Article 59 of the | 220 |
| | | | Vienna Convention | 228 |
| | | 4.3.3 | Termination as a Consequence of a Breach of the MLI: | 220 |
| | | | Article 60 of the Vienna Convention | 229 |
| | 4.4 | Proced | ural Requirements | |
| | | 4.4.1 | Notification | 230 |
| | | 4.4.2 | Objection | 230 |
| | | 4.4.3 | Expiry of at Least a Three-Month Period | 231 |
| | 4.5 | | juences of a Termination | 231 |
| | 1.0 | 4.5.1 | Consequences of the Termination of the MLI: Article 70 | 231 |
| | | 1.5.1 | of the Vienna Convention | 20200 |
| | | 4.5.2 | | 232 |
| | | 4.5.3 | Unless the Treaty Otherwise Provides | 233 |
| | | 4.5.4 | Unless the Parties Otherwise Agree | 233 |
| | | 4.5.4 | Releases the Parties from Any Obligation Further to | |
| | | 4.5.5 | Perform the MLI | 234 |
| | | 4.5.5 | Does Not Affect Any Right, Obligation or Legal | |
| | | | Situation of the Partie: Created Through the | |
| | | 150 | Execution of the Treaty Prior to Its Termination | 234 |
| 2 | | 4.5.6 | Subsequent Modification of Tax Treaties | 235 |
| 5 | Conclu | sion | | 235 |
| Crrr | | | 200 | |
| | TER 11 | | | |
| Con | re Chan | ges to Co | overed Tax Agreements and of the Multilateral | |
| COII | enuon i | to impiei | mem Tax Treaty-Related Measures to Prevent BEPS | |
| Nau | alie Bra | vo 1 | | 237 |
| 1 | Introdu | ection | | |
| 2 | | | Covered Tax Agreements | 237 |
| 3 | Modii | tions of | f Previous of Complete American | 238 |
| J | Turoug | h the MI | f Provisions of Covered Tax Agreements as Modified | |
| | 3.1 | | | 240 |
| | 3.1 | Dramisis | etation of Article 30 of the MLI with Regard to | |
| | | the MLI | ons of Covered Tax Agreements as Modified Through | |
| | 3.2 | | | 240 |
| | 5.2 | | re Grounds for an Alternative Interpretation of | |
| | 2.2 | | 30 of the MLI? | 243 |
| 1 | 3.3 | Notifica | tions Regarding Subsequent Modifications | 249 |
| 4 | | | the MLI | 254 |
| 5 | | | endment Procedures of Multilateral Treaties | 259 |
| 6 | Conclus | sion | | 263 |
| Index | • | | | 265 |
| | | | | 7/ |