**MLI Modifications: Kenya-United Kingdom**

*Editor’s Note: This summary is based on the MLI positions submitted to the Depositary upon the deposit of the ratification instruments by Kenya and United Kingdom, and does not constitute business, legal, tax, or other professional advice or services. It is intended only to provide a general guide*. *In applying the MLI provisions to this treaty, researchers should ensure they review other relevant MLI sources. Please see the Bloomberg Tax* [*MLI Watch*](https://www.bloomberglaw.com/product/tax/page/MLI_watch) *page for further research.*

**Date this Agreement is Modified by the MLI (Enters into Force):** May 1, 2025

**MLI instrument of ratification deposited (Kenya):** January 8, 2025

**MLI instrument of ratification deposited (United Kingdom):** June 29, 2018

**MLI effective date, withholding taxes (Kenya and United Kingdom):** January 1, 2026

**MLI effective date, all other taxes (Kenya and United Kingdom):**Taxable periods beginning on or after November 1, 2025.

**Transparent Entities (MLI Article 3)**

According to MLI Art. 3(6), the provision on fiscally transparent entities in MLI Art. 3(1) applies and supersedes the provisions of this Agreement to the extent of incompatibility (i.e. MLI Art. 3(1) is added to this Agreement).

MLI Art. 3(2), which modifies the application of the provisions related to methods for the elimination of double taxation, does not apply to this Agreement.

**Dual Resident Entities (MLI Article 4)**

According to MLI Art. 4(2), the provision on dual resident entities in MLI Art. 4(1) replaces Art. 4(3) of this Agreement.

**Purpose of a Covered Tax Agreement (MLI Article 6)**

According to MLI Art. 6(2), to meet the minimum standard, the text of MLI Art. 6(1), indicating the intent to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements, replaces the notified preamble language of this Agreement. The optional preamble language of MLI Art. 6(3) does not apply.

**Prevention of Treaty Abuse (MLI Article 7)**

According to MLI Art. 7(2), to meet the minimum standard, the Principal Purpose Test (PPT) provision of MLI Art. 7(1), that denies benefits that would otherwise be provided where the principal purpose or one of the principal purposes of any arrangement or transaction was to obtain those benefits, applies and supersedes the provisions of this Agreement to the extent of incompatibility (i.e., the PPT provision is added to this Agreement). The optional additional language of MLI Art. 7(4) does not apply. The Simplified Limitation on Benefits Provision (S-LOB) does not apply.

**Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents (MLI Article 11)**

According to MLI Art. 11(2), the “saving clause” provision of MLI Art. 11(1) applies and supersedes the provisions of this Agreement to the extent of incompatibility (i.e., MLI Art. 11(1) is added to this Agreement).

**Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions (MLI Article 13)**

According to MLI Art. 13(5)(b), the anti-fragmentation rule of MLI Art. 13(4) applies, changing the application of Art. 5(3) of this Agreement without replacing it. Neither option regarding the specific activity exemption to permanent establishment status applies, since Kenya chose to apply Option A and United Kingdom did not choose to apply an option, and an option applies only where both Jurisdictions have chosen to apply it.

**Definition of a Person Closely Related to an Enterprise (MLI Article 15)**

The definition of a person closely related to an enterprise in MLI Art. 15(1) applies for the purposes of Art. 5(3) of this Agreement (as modified by the anti-fragmentation rule of MLI Art. 13(4)).

**Mutual Agreement Procedure (MLI Article 16)**

The first sentence of MLI Art. 16(1), providing that a person may present a case to the competent authority of either jurisdiction, does not apply as Kenya intends to meet the minimum standard through other measures.

The following provisions of this Agreement related to dispute resolution are modified to meet the minimum standard:

•  The second sentence of MLI Art. 16(1), providing that a case be presented within three years from the first notification of action, applies and supersedes the provisions of this Agreement to the extent of incompatibility (i.e., the second sentence of MLI Art. 16(1) is added to this Agreement).

•  The second sentence of MLI Art. 16(2), providing that any agreement be implemented notwithstanding any time limits in the domestic law of either Jurisdiction, is added to this Agreement.

•  The second sentence of MLI Art. 16(3), providing that the competent authorities may consult together for the elimination of double taxation in cases not provided for in this Agreement, is added to this Agreement.

The remaining provisions of this Agreement relating to dispute resolution are retained as they are considered consistent in content with the provisions of MLI Art. 16(2)(first sentence) and MLI Art. 16(3)(first sentence), and meet the minimum standard.

According to MLI Art. 35(4), the mutual agreement procedure provisions of MLI Art. 16 have effect for cases presented to the competent authority on or after May 1, 2025, except for cases that were not eligible to be presented as of that date, without regard to the taxable period to which the case relates.

**Corresponding Adjustments (MLI Article 17)**

According to MLI Art. 17(2), the provision of MLI Art. 17(1), providing that a Jurisdiction will make a corresponding adjustment where the other Jurisdiction makes an adjustment that reflects the arm's length profit, applies and supersedes the provisions of this Agreement to the extent of incompatibility (i.e., MLI Art. 17(1) is added to this Agreement).