**MLI Modifications: Canada-Kenya**

*Editor’s Note: This summary is based on the MLI positions submitted to the Depositary upon the deposit of the ratification instruments by Canada and Kenya, 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 (Canada):** August 29, 2019

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

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

**MLI effective date, all other taxes (Canada and Kenya):** November 1, 2025

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

*[Note: The OECD MLI Matching Database has indicated a possible notification mismatch which requires confirmation that both Jurisdictions have notified the same provision under MLI Art. 4(4). Canada has notified Articles IV(3) and (4) and Kenya has notified Articles 4(3) and 4(4) of this Agreement. The following discussion assumes there is no mismatch. i.e., that both jurisdictions have notified the same provision under MLI Art. 4(4).* *If it is determined that there is a mismatch, MLI Art. 4(1) would apply and supersede the provisions of this Agreement to the extent of incompatibility].*

According to MLI Art. 4(2), the provision on dual resident entities in MLI Art. 4(1) replaces Arts. 4(3) and 4(4) 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, is added to the existing preamble 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), 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) to meet the minimum standard. Canada has expressed acceptance of the PPT as an interim measure, with the intention where possible to adopt a Limitation on Benefits (LOB) provision, in addition to or in replacement of the PPT, through bilateral negotiation. The optional additional language of MLI Art. 7(4) does not apply. The Simplified Limitation on Benefits Provision (S-LOB) does not apply.

**Dividend Transfer Transactions (MLI Article 8)**

*[Note: The OECD MLI Matching Database has indicated a possible notification mismatch which requires confirmation that both Jurisdictions have notified the same provision under MLI Art. 8(4). I Canada has notified Article X(2)(a) and Kenya has notified Article 10(2)(a) of this Agreement. The following discussion assumes there is no mismatch, i.e., that both Jurisdictions have notified the same provision under MLI Art. 8(4). If it is determined that there is a mismatch, then MLI Art. 8(1) does not apply.]*

According to MLI Art. 8(4), MLI Art. 8(1) applies to Art. 10(2)(a) of this Agreement, changing the application of the article without replacing it.

**Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property (MLI Article 9)**

According to MLI Art. 9(8), the optional provision of MLI Art. 9(4) that allows gains derived by a resident of one jurisdiction from the alienation of shares or comparable interests deriving more than 50% of their value from immovable property in the other jurisdiction at any time during a 365 day period preceding the alienation to be taxed in the other jurisdiction, replaces Art. 13(3) of this Agreement.

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

*[Note: The OECD MLI Matching Database has indicated a possible notification mismatch which requires confirmation as to whether both jurisdictions have identified the same provision under MLI Art. 16(6)(b)(i). Canada notified Art. XXVI(1)(second sentence) and Kenya notified Art. 26(1)(second sentence). The following discussion assumes there is no mismatch, i.e., that both jurisdictions have notified the same provision under MLI Art. 16(6)(b)(i). If there is a mismatch, MLI Art. 16(1)(second sentence) is added to the existing article of this Agreement.]*

The following provision of this Agreement related to dispute resolution is 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, replaces the second sentence of Art. 26(1) of this Agreement.

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 both Canada and Kenya intend to meet the minimum standard through other measures. 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, does not apply as Canada intends to meet the minimum standard through other measures.

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), 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.