**MLI Modifications: Denmark-Kenya**

*Editor’s Note: This summary is based on the MLI positions submitted to the Depositary upon the deposit of the ratification instruments by Denmark 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 Convention is Modified by the MLI (Enters into Force):** May 1, 2025

**MLI instrument of ratification deposited (Denmark):** September 30, 2019

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

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

**MLI effective date, all other taxes (Denmark):** January 1, 2026

**MLI effective date, all other taxes (Kenya):** 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 Convention). In addition, MLI Art. 3(2), which modifies the application of the provisions related to methods for the elimination of double taxation, applies to this Convention.

**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 Convention.

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

*[Note: The OECD MLI Matching Database has indicated a possible notification mismatch which requires confirmation as to whether both jurisdictions have identified the same preamble language. The following discussion assumes there is no mismatch, i.e., that both jurisdictions have notified the same preamble language under MLI Art. 6(5). If there is a mismatch, the text of MLI Art. 6(1) is added to the existing preamble language.]*

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 Convention. 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 Convention to the extent of incompatibility (i.e., the PPT provision is added to this Convention). In addition, MLI Art. 7(6), the Simplified Limitation on Benefits Provision (S-LOB) provision applies and supersedes the provisions of this Convention to the extent of incompatibility (i.e., the S-LOB provision is added to this Convention). The optional language of MLI Art. 7(4) does not apply.

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

*[Note: 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). Denmark has notified Article 10(2) and Kenya has notified Article 10(2)(a) Convention. The MLI does not make clear whether a technical mismatch caused by one party’s notification of a provision that is included in, but is not coextensive with, a provision named in the other party’s notification should be viewed as a common notification of the lesser included provision.  The following discussion assumes there is no mismatch, i.e., that both jurisdictions have notified the same provision under MLI Art. 8(4).* *If there is a mismatch MLI Art. 8(1) does not apply with respect to Article 10(2) of this Convention.]*

According to MLI Art. 8(4), MLI Art. 8(1) applies to Art. 10(2)(a) of this Convention, 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 that other Jurisdiction, applies and supersedes the provisions of this Convention to the extent of incompatibility (i.e., MLI Art. 9(4) is added to this Convention).

**Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions (MLI Article 10)**

According to MLI Art. 10(4), the provisions of MLI Art. 10(1)-(3) apply and supersede the provisions of this Convention that deny or limit benefits available to an enterprise of a Jurisdiction that derives income from the other Jurisdiction that is attributable to a permanent establishment of the enterprise situated in a third jurisdiction, to the extent of incompatibility (i.e., MLI Art. 10(1)-(3) is added to this Convention).

**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 Convention to the extent of incompatibility (i.e., MLI Art. 11(1) is added to this Convention).

**Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies (MLI Article 12)**

*[Note: The OECD MLI Matching Database has indicated a possible notification mismatch which requires confirmation as to whether both jurisdictions have notified the same provision under MLI Art. 12(5)). Denmark has notified Article 5(4) and Kenya has notified Article 5(4)(a). The MLI does not make clear whether a technical mismatch caused by one party’s notification of a provision that is included in, but is not coextensive with, a provision named in the other party’s notification should be viewed as a common notification of the lesser included provision.  The following discussion assumes there is no mismatch, i.e., that both jurisdictions have notified the same provision under MLI Art. 12(5).*  *If it is determined there is a mismatch, MLI Art. 12(1) does not apply with respect to Article 5(4) of this Convention.]*

According to MLI Art. 12(3), the provision of MLI Art. 12(1), which expands the circumstances under which a dependent agent creates a permanent establishment, to include situations where a person, acting on behalf of an enterprise, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contacts without material modifications by the enterprise, replaces Art. 5(4)(a) of this Convention.

In addition, the provision of MLI Art. 12(2), which restricts the definition of independent agent to exclude a person acting exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, replaces Art. 5(6) of this Convention.

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

According to MLI Art. 13(5)(a), Option A under MLI Art. 13(2), which preserves the specific activity exemptions only if the specific activity or, where there is a combination of such activities, the overall activity, is of a preparatory or auxiliary character applies, changing the application of Art. 5(3) of this Convention. 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 Convention without replacing it.

**Splitting-up of Contacts (MLI Article 14)**

According to MLI Art. 14(2), the splitting-up of contracts rule of MLI Art. 14(1), which addresses the division of contracts into multiple parts to avoid the application of a time period in relation to the existence of a permanent establishment for specific projects or activities, applies and supersedes the provisions of this Convention to the extent of incompatibility (i.e., MLI Art. 14(1) is added to this Convention.

**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 purposes of Art. 5(3) of this Convention (as modified by the anti-fragmentation rule of MLI Art. 13(4)); for purposes of Art. 5(6) of this Convention (as modified by the provision addressing independent agents, acting in the ordinary course of their business of MLI Art. 12(2)); and for purposes of MLI Art. 14(1), providing the splitting-up of contracts rule, which was added to this Convention.

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

The following provision of this Convention related to dispute resolution is modified to meet the minimum standard:

* 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 Convention.

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 remaining provisions of this Convention relating to dispute resolution are retained as they are considered consistent in content with the provisions of MLI Art. 16(1)(second sentence), MLI 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.

**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 Convention to the extent of incompatibility (i.e., MLI Art. 17(1) is added to this Convention).