**MLI Modifications: France-Kenya**

*Editor’s Note: This summary is based on the MLI positions submitted to the Depositary upon the deposit of the ratification instruments by France 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 (France):** September 26, 2018

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

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

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

**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, replaces Art. 10(7), Art. 11(8), Art. 12(7) and Art. 21(5) of this Convention. The PPT may also apply to other provisions of this Convention according to its terms.  The optional additional language of MLI Art. 7(4) does not apply. The Simplified Limitation on Benefits Provision (S-LOB) does not apply.

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

*[Note: Under MLI Art. 9(8), the MLI's provisions replace provisions of this Convention that are notified by both parties, and otherwise are added to and supersede the Convention to the extent of incompatibility. France notified Article 13(1)(b) first sentence and Kenya notified Article 13(1)(b) of this Convention. The following discussion assumes the parties notified the same provision to the extent of the match, and the remainder of Convention Art. 13(1)(b) is not substantively relevant to MLI Art. 9. If it is determined there is a mismatch, MLI Art. 9(4) would apply and supersede this Convention to the extent of incompatibility.]*

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, applies and replaces the first sentence of Art. 13(1)(b) of this Convention.

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

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(5) 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(7) of this Convention.

**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(4) of this Convention without replacing it. Neither option regarding the specific activity exemption to permanent establishment status applies, since France chose to apply Option B and Kenya chose to apply Option A, 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 enterprise in MLI Art. 15(1) applies for the purposes of Art. 5(4) of this Convention (as modified by the anti-fragmentation rule of MLI Art. 13(4)) and Art. 5(7) of this Convention (as modified by the provision addressing independent agents, acting in the ordinary course of their business of MLI Art. 12(2)).

**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 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) and MLI Art. 16(3) and meet the minimum standard.

**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, replaces Art. 9(2) of this Convention.