

ITALY – MLI ARBITRATION PROFILE

AS OF 28-06-2022

This document contains information on Italy’s arbitration position under Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). It also contains hyperlinks to Italy’s competent authority agreements concluded to settle the mode of application of the provisions contained in Part VI of the MLI.

References

- MLI Position (<https://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>)
- MAP Profile (<https://www.oecd.org/tax/dispute/country-map-profiles.htm>)
- Synthesised text (the hyperlinks to the synthesised texts obtainable from the MLI Matching Database <https://www.oecd.org/tax/treaties/ml-matching-database.htm>)

Type of arbitration process

The “final offer” arbitration process (otherwise known as “last best offer” arbitration) will apply as the default type of arbitration process to Italy’s Covered Tax Agreements except to the extent that the competent authorities of Contracting Jurisdictions of a Covered Tax Agreement mutually agree on different rules.

Competent authority agreements and entry into effect of Part VI

Competent authority agreements:

The competent authority of Italy has, by mutual agreement, settled the mode of application of the provisions contained in Part VI of the MLI with the competent authority of the jurisdictions as indicated below:

No	Treaty partner	Hyperlinks to competent authority agreements	Date on which both Contracting Jurisdictions have notified that they reached mutual agreement ¹
1	Australia		
2	Austria		
3	Barbados		
4	Belgium		
5	Canada		
6	Denmark		
7	Finland		
8	France		
9	Germany		
10	Greece		
11	Hungary		
12	Ireland		
13	Japan		

¹ Dates and hyperlinks will be added once notified.

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14	Luxembourg		
15	Malta		
16	Mauritius		
17	Netherlands		
18	New Zealand		
19	Portugal		
20	Singapore		
21	Slovenia		
22	Spain		
23	Sweden		
24	Switzerland		
25	United Kingdom		

Entry into effect of Part VI of the MLI:

Article 36 of the MLI governs the entry into effect of the provisions of Part VI of the MLI with respect to:

- cases presented to the competent authority of a Contracting Jurisdiction on or after the later of the dates on which the MLI enters into force for each of the Contracting Jurisdictions; and,
- cases presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which the MLI enters into force for each of the Contracting Jurisdictions.

Reservations on the entry into effect of Part VI

Pursuant to Article 36(2) of the MLI, Italy has reserved the right for Part VI to apply to a case presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement only to the extent that the competent authorities of both Contracting Jurisdictions agree that it will apply to that specific case.

Pursuant to Article 35(7)(a) of the MLI, Italy has reserved the right to delay the entry into effect of Part VI until it has completed its internal procedures for this purpose.

Reservations on the scope of cases eligible to Part VI of the MLI

Pursuant to Article 28(2)(a) of the MLI, Italy has formulated the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI:

1. Italy reserves the right to exclude from the scope of Part VI cases concerning items of income or capital that are not taxed by a Contracting Jurisdiction because they are not included in the taxable base in that Contracting Jurisdiction or because they are subject to an exemption or zero tax rate provided under the domestic tax law of that Contracting Jurisdiction.
2. Italy reserves the right to exclude from the scope of Part VI cases involving the application of an anti-abuse rule in a Covered Tax Agreement or in Italy's domestic legislation, namely article 10-bis of L 212/2000 (as enacted by Legislative Decree 128/2015). Any subsequent rules replacing, amending or updating this anti-abuse rule would also be comprehended. Italy shall notify the Depositary of any such subsequent rule.
3. Italy reserves the right to exclude from the scope of Part VI cases concerning dual resident persons.
4. Italy reserves the right to exclude from the scope of Part VI cases involving penalties related to tax fraud, wilful default and gross negligence.

Additional note