

CANADA – MLI ARBITRATION PROFILE

AS OF 25-03-2021

This document contains information on Canada’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 Canada’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/mli-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 Canada’s Covered Tax Agreements. Canada reserved the right not to apply independent opinion arbitration. In cases where one of its treaty partners to a Covered Tax Agreement reserves the right not to apply last best offer arbitration, Canada and its treaty partner will endeavour, in accordance with Article 23(3) of the MLI, to reach an agreement on the type of arbitration process that will apply. In these cases, Article 19 will not apply between Canada and the treaty partner until such agreement is in place.

Competent authority agreements and entry into effect of Part VI

Competent authority agreements:

The competent authority of Canada 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	Finland		
6	France		
7	Greece		
8	Hungary		
9	Ireland		
10	Italy		

¹ Dates and hyperlinks will be added once notified.

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11	Japan		
12	Luxembourg		
13	Malta		
14	Netherlands		
15	New Zealand		
16	Papua New Guinea		
17	Portugal		
18	Singapore		
19	Slovenia		
20	Spain		
21	Sweden		

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 scope of cases eligible to Part VI of the MLI

Pursuant to Article 28(2)(a) of the MLI, Canada 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. Canada reserves the right to limit the scope of issues eligible for arbitration under the MLI to the following:
 - a) Issues arising under provisions akin to Article 4 (Resident) of the OECD Model Tax Convention, but only insofar as the issue relates to the residence of an individual;
 - b) Issues arising under provisions akin to Article 5 (Permanent Establishment) of the OECD Model Tax Convention;
 - c) Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention;
 - d) Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention;
 - e) Issues arising under provisions akin to Article 12 (Royalties) of the OECD Model Tax Convention, but only insofar as such a provision might apply in transactions involving related persons to which provisions akin to Article 9 of the OECD Model Tax Convention might apply; and
 - f) Any other provisions subsequently agreed by the Contracting Jurisdictions through an exchange of diplomatic notes.
2. Canada reserves the right to exclude from the scope of the arbitration provisions of the MLI issues pertaining to the application of anti-abuse provisions whether contained in the MLI, a Covered Tax Agreement, or the domestic law of a Contracting Jurisdiction.

Additional note

Canada filed an objection to one of the reservations made by Denmark on the scope of issues eligible for arbitration. The reservation dealt with the status of the Chair of the arbitration panel and the publication of extracts of arbitration decisions. As a result, Part VI of the MLI does not apply between Canada and Denmark.