

DENMARK – MLI ARBITRATION PROFILE AS OF 07-09-2023

This document contains information on Denmark’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 Denmark’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 Denmark’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 or except where the other Contracting Jurisdiction has made the reservation described in Article 23(2) not to apply the “last best offer” arbitration. In that case, and as Denmark has reserved its right not to apply independent opinion arbitration under Article 23(3), Denmark and the other Contracting Jurisdiction will endeavour, in accordance with Article 23(3) of the MLI, to reach an agreement on the type of arbitration process that will apply. Article 19 will not apply between Denmark and the other Contracting Jurisdiction until such agreement is in place.

Competent authority agreements and entry into effect of Part VI

Competent authority agreements:

The competent authority of Denmark 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	Australia		
2	Belgium		
3	Canada		
4	Greece		
5	Hungary		
6	Ireland		
7	Italy		
8	Luxembourg		
9	Malta		
10	New Zealand		

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11	Portugal		
12	Singapore		
13	Slovenia		
14	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 Convention 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, Denmark 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. Part VI (Arbitration) of the Convention shall not apply to cases that fall within the scope of application of the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC) as amended, of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union, or subsequent regulation.
2. Part VI (Arbitration) of the Convention shall not apply to cases where penalties were imposed on an individual or a legal person by a Party for tax fraud, willful default or gross negligence.

Additional note

Denmark deposited its instrument of ratification on 30 September 2019 and made, at that time, the reservations under Article 28(2)(a) mentioned above, as well as a third reservation that was providing that:

“Part VI (Arbitration) of the Convention shall apply to a tax case only insofar the Parties agree that:

- (a) the Chair of the arbitration panel shall be a judge, and
- (b) Denmark shall be permitted to publish abstracts of decisions made by the arbitration panel.”

Denmark withdrew those reservations subsequent to its ratification. The notification of the withdrawal was received by the Depositary on 29 June 2021 and communicated by the Depositary on 30 June 2021.

Denmark wishes to emphasise that it continues to attach great importance to the principles of independence and transparency associated with arbitration processes as a means of ensuring legal certainty.

Therefore, when negotiating competent authority mutual agreements to settle the mode of application of Part VI pursuant to Article 19(10) of the Convention, Denmark will seek to provide that:

- (a) the Chair of the arbitration panel will be a judge, and
- (b) Denmark may publish abstracts of decisions of the arbitration panel.