

# PORTUGAL – MLI ARBITRATION PROFILE

## AS OF 25-03-2021

*This document contains information on Portugal'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 Portugal'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 and time-period for purposes of applying Part VI of the MLI

The "independent opinion" approach will apply as the default type of arbitration process to Portugal's Covered Tax Agreements except to the extent that competent authorities mutually agree on different rules or except where other Contracting Jurisdictions have reserved their right to not apply the "independent opinion" pursuant to Article 23(3) of the MLI.

For purposes of applying Part VI, Portugal reserved its right to replace the two-year period set forth in Article 19(1)(b) of the MLI with a three-year period pursuant to Article 19(11) of the MLI.

### Competent authority agreements and entry into effect of Part VI

#### Competent authority agreements:

The competent authority of Portugal 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 <sup>1</sup>
1	Andorra		
2	Austria		
3	Barbados		
4	Belgium		
5	Canada		
6	Denmark		
7	Finland		
8	France		
9	Greece		
10	Hungary		

<sup>1</sup> Dates and hyperlinks will be added once notified.

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11	Ireland		
12	Italy		
13	Luxembourg		
14	Malta		
15	Netherlands		
16	Singapore		
17	Slovenia		
18	Spain		
19	Switzerland		
20	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, Portugal 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.

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

Pursuant to Article 28(2)(a) of the MLI, Portugal 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. The Portuguese Republic 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 5 (Permanent Establishment) of the OECD Model Tax Convention;
  - b) Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention; and
  - c) Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention.
2. The Portuguese Republic 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 either 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 only under the domestic tax law of that Contracting Jurisdiction.
3. The Portuguese Republic reserves the right to exclude from the scope of Part VI cases involving the conduct of a person directly affected by the case that, by final ruling resulting from judicial or administrative proceedings, has been subject to a penalty for tax fraud, wilful default or gross negligence. For this purpose, penalties for tax fraud, wilful default or gross negligence shall include the penalties for tax crimes as well as for other serious tax

infringements as defined by Article 23(3) of RGIT (Regime Geral das Infrações Tributárias), enacted by the Law 15/2001, of 5 June 2001. Any subsequent provisions replacing, amending or updating these provisions would also be comprehended. The Portuguese Republic shall notify the Depository of any such subsequent provisions.

4. The Portuguese Republic reserves the right to exclude from the scope of Part VI cases involving the application of domestic general anti-avoidance rules or anti-abuse rules contained in a Covered Tax Agreement as modified by the MLI. For this purpose, the Portuguese Republic's domestic general anti-avoidance rules shall include Articles 38 and 39 of LGT (Lei Geral Tributária) enacted by the Decree-Law 398/98, of 17 December 1998, as amended. Any subsequent rules replacing, amending or updating these anti-avoidance rules would also be comprehended. The Portuguese Republic shall notify the Depository of any such subsequent provisions.
5. The Portuguese Republic reserves the right to exclude from the scope of Part VI cases eligible for arbitration under the MLI on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), as amended, or the European Union Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, or under any other instrument of the European Union.

#### Additional note