

# African Tax Matters

Quarterly newsletter

Q3 2018 – 3rd edition

## Dear reader

Moving into the last quarter of 2018, it is yet time to draw up the situation and look back at the development of the African tax landscape during Q3 in 2018.

All over the world, governments and tax authorities, tax professionals and large corporations are talking about OECD's Multilateral Instrument (hereinafter referred to as "MLI") and what its presence will mean in the global tax debate. The MLI has been a hot tax topic this year, and more than 100 jurisdictions participated in concluding the negotiations of the content herein, on the Multilateral Convention.

In the future, the MLI will without doubt have a far-reaching influence on the global tax landscape in a very broad manner – this goes for Africa as well.



Currently, the MLI has already been signed by 84 jurisdictions, of which 11 are African jurisdictions.

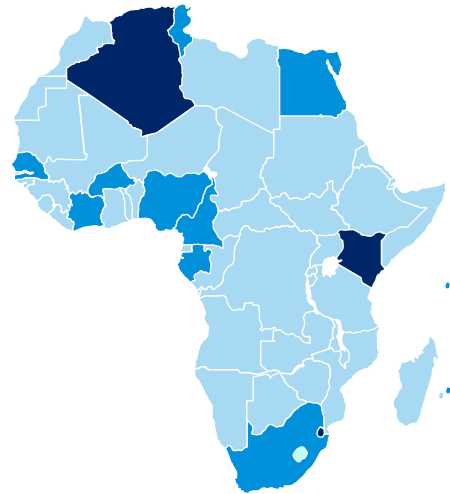
Furthermore, a significant amount of additional jurisdictions, including African countries, are actively working towards signing the MLI and have expressed their intention to implement the MLI within the foreseeable future.

This edition of the newsletter will provide a deeper view of the new tax schemes/rules to be introduced by the MLI and how this is expected to impact not only Danish investors with existing operations in Africa but also the impact and considerations necessary to consider prior to entering into new investment projects within Africa.

We wish you a pleasant reading.

KPMG Acor Tax Team

-  = African countries signed the MLI Convention
-  = African countries expressed their intent to sign the MLI Convention



## Contact Information



**Thomas Iversen**  
Director  
International Corporate Tax  
P: +45 5374 7075  
M: [Thomas.Iversen@kpmg.com](mailto:Thomas.Iversen@kpmg.com)



**Emil Hartmann**  
Manager  
International Corporate Tax  
P: +45 5374 7074  
M: [Emil.Hartmann@kpmg.com](mailto:Emil.Hartmann@kpmg.com)



**Ying Xian Zhao**  
Consultant  
International Corporate Tax  
P: +45 5077 0958  
M: [Ying.Zhao@kpmg.com](mailto:Ying.Zhao@kpmg.com)

## Multilateral Instrument

### The tax rules incorporated via the MLI

The MLI, being the first of its kind, is aimed at implementing certain tax treaty related measures in order to prevent base erosion and profit shifting (“BEPS”).

The MLI is envisioned to apply alongside the existing tax treaties, modifying the application of the individual articles in the respective tax treaties. Thus, going forward, the MLI and the bilateral double tax treaties must be read and interpreted in one. Generally speaking, however, the MLI should going forward prevail over the provisions of any existing tax treaty agreement (provided both parties have ratified the specific clause in question).

The specific BEPS initiatives to be implemented with the MLI aim to prevent tax avoidance strategies that exploit gaps and mismatches in the domestic tax regimes, allowing artificial arrangements in which profits may be shifted from high tax jurisdictions to low – or no tax locations.

More specifically, the MLI seeks to implement the following BEPS recommendations:

- BEPS Action point 2: *hybrid mismatch arrangements*, which refers to arrangements exploiting differences in the tax treatment of instruments, entities or transactions between two or more countries and thus results in a mismatch in tax outcomes.
- BEPS Action point 6: *treaty abuse*, which relates to prevention of granting of treaty benefits in inappropriate circumstances (e.g. use of conduit companies). BEPS Action point 6 is also a minimum standard in the MLI.

### The tax rules incorporated via the MLI (continued)

- BEPS Action point 7: *permanent establishment*, which refers to the strategies used to avoid having a taxable presence in a country under the respective tax treaty, and thus the need to ensure the definition of a ‘permanent establishment’.
- BEPS Action point 14: *resolving treaty resolutions*, which refers to improvement of mechanisms to resolve treaty disputes. BEPS Action point 14 is also a minimum standard in the MLI.

### Treaty-related minimum standards in the MLI

The MLI introduces two mandatory minimum standard provisions. Thus, upon signing the MLI, the country accepts to adopt these with limited option for adjustments in respect of all their covered tax agreements (“CTA”).

#### *Treaty abuse*

The mandatory minimum standard provisions regarding treaty abuse require the countries to:

1. Include in their tax treaties a definite statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance including through treaty shopping arrangements.
2. Address treaty shopping by, as a minimum, implementing either one of the following options:
  - i. a principal purpose test (PPT) alone
  - ii. a PPT and a simplified or detailed limitation on benefits provision (LOB), which is a supplement to the default option, or
  - iii. a detailed LOB, supplemented by a mechanism that would deal with conduit arrangements not already dealt with in the tax treaty.

As a default (unless option 2,ii. or 2,iii. are chosen), the PPT will apply to all treaties covered by the MLI. We expect at this stage that a majority of the countries signing the MLI will elect the default option.



## Treaty-related minimum standards in the MLI (continued)

PPT is an anti-abuse rule assessing the principle purposes of a single or a group of transactions or arrangements. This clause provides the tax authorities a general allowance to address cases of treaty abuse, including treaty-shopping situations such as e.g. certain conduit financing arrangements that are not covered by more specific anti-abuse rules. Thus, going forward, a transaction or a series of transactions whose primary purpose has been tax driven, may no longer obtain the intended tax treaty benefits, if the arrangements cannot be supported by actual commercial reasons.

### *Improved dispute resolution*

The jurisdictions have furthermore recognised the need to make the international dispute resolution more effective and minimise the risks of uncertainty and unintended double taxation.

Consequently, the jurisdictions signing the MLI will also agree on a minimum standard with respect to the resolution of treaty-related disputes and a number of best practices and agree to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism that will report regularly through the Committee on Fiscal Affairs.

Generally speaking, the mandatory minimum standard provision regarding dispute resolution requires the countries to:

- commit to ensure that treaty obligations related to the mutual-agreement-procedure (“MAP”) are fully implemented.
- commit that administrative processes promote to resolve treaty-related disputes in a timely, effective and efficient manner.
- commit to seek to resolve MAP cases within an average timeframe of 24 months.

## MLI’s impact on the African tax landscape

### *Trends and initiatives*

Given the above trends and initiatives, it is expected that the future African tax regimes to be developed will be highly correlated with the ongoing progression with BEPS, while continuously aimed at creating an attractive investor environment to maintain the economic momentum through tax regimes based on fairness and shared understanding of taxing income where the profits are generated.

The tax systems across the African continent is also expected, going forward, to become more and more transparent, and as such prevent uncertainty in interpretation of the various tax regulations from gaining momentum. As a consequence hereof, the tax regimes introduced in the separate African countries in the future may no longer be an entry barrier of concern for Danish investors.

The MLI will also most certainly support certain African countries with its commitment to a timely and consistent implementation of the BEPS minimum standards.

Furthermore, the MLI is a milestone for Africa as well as for the international taxation forum in general as it allows all interested jurisdictions to update their tax treaties with provisions reflecting internationally agreed standards.

From a tax perspective, the MLI will presumably level out the playing field between the African countries as well as between many countries in the rest of the world.



## **MLI's impact on the African tax landscape (continued)**

### *Investments in Africa*

However, it is also imperative that current and potential future investors in Africa must carefully consider the new rules and ensure that any structure or arrangement(s) de facto is driven for commercial reasons, based on real and actual substance rather than an artificial structure or arrangement(s) whose main purpose is to reduce or even in some cases avoid taxation.

This point seems to be further emphasised by the recent years' development, where the local African governments, domestically as well as across the African regions, through organisations like the African Tax Administration Forum have been committed to invest heavily into their tax administration in order to better collect its taxes and mitigate tax fraud.

It goes without saying that investment structures should be (even more) carefully considered now and in the future, compared to how investments into African countries historically have been made.

## **Current MLI status in Africa**

So far, 11 African countries have signed the MLI and indicated their preliminary MLI positions with regard to which tax treaties they wish to include in their list of CTAs, and which reservations and choices of optional provisions they make.

The indicated MLI positions will be finale and confirmed once the respective African countries deposit their ratification.

The individual countries may amend their MLI positions up until ratification; therefore, the status of the African countries' accession are at this point in time still to be finally confirmed. However, it is worth noting that the first jurisdictions which confirmed their MLI positions made it without adjustments.

None of the African countries have as of yet deposited their instrument of ratification, but this is expected to happen sooner than later.

If the African countries will ratify in the same direction as the "front runners", it is our expectation that the initiated MLI positions will be ratified without significant changes.

We will pay close attention to the African countries under the MLI, and we will keep you posted.

### *The following African countries have currently signed the MLI Convention:*

Burkina Faso, Cameroon, Côte d'Ivoire, Egypt, Gabon, Mauritius, Nigeria, Senegal, Seychelles, South Africa and Tunisia.

### *The following African countries have, at this stage, expressed their intent to sign the MLI Convention:*

Algeria, Kenya and Swaziland.



### **KPMG Acor Tax**

Join our community on LinkedIn and stay updated on events, news and opportunities

[KPMG Acor Tax LinkedIn](#)

Visit our website at [kpmgacor.dk](http://kpmgacor.dk)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.