

GERMANY – MLI ARBITRATION PROFILE

AS OF 28-06-2022

This document contains information on Germany'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 Germany'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 "final offer" arbitration process (otherwise known as "last best offer" arbitration) will apply as the default type of arbitration process to Germany'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 adopt the "independent opinion" approach as the default type of arbitration process pursuant to Article 23(2) of the MLI.

For purposes of applying Part VI, Germany 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 Germany 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	Greece		
2	Hungary		
3	Italy		
4	Malta		
5	Spain		

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.

¹ Dates and hyperlinks will be added once notified.

Reservations on the entry into effect of Part VI

Pursuant to Article 36(2) of the MLI, Germany 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, Germany has reserved the right to delay the entry into effect of Part VI until it has completed its internal procedures for this purpose. In accordance with Article 35(7)(a) of the MLI, Part VI will take effect with respect to a covered tax agreement 30 days after the date of receipt by the Depository of the latest notification regarding the completion of internal procedures.

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

Pursuant to Article 28(2)(a) of the MLI, Germany 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 Federal Republic of Germany reserves the right to exclude from the scope of Part VI any case in which an anti-abuse rule laid down in domestic law or in a tax treaty (e.g. Parts 4, 5 and 7 of the German External Tax Relations Act (Außensteuergesetz), section 42 of the German Fiscal Code (Abgabenordnung), section 50d(3) of the German Income Tax Act (Einkommensteuergesetz)) has been applied.
2. The Federal Republic of Germany reserves the right to exclude from the scope of Part VI any case involving conduct for which the taxpayer, a person acting on his behalf, or a related person has been found guilty by a court of a tax offence or has been subject to the imposition of a serious penalty.
3. The Federal Republic of Germany reserves the right to exclude from the scope of Part VI cases that concern 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 law of that Contracting Jurisdiction.
4. The Federal Republic of Germany reserves the right to exclude from the scope of Part VI any case that falls within the scope of application of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union or the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), as amended, or any subsequent regulation.
5. The Federal Republic of Germany reserves the right to exclude from the scope of Part VI any case in which double taxation is avoided by using the credit method instead of the exemption method, based on the application of a provision of domestic or treaty law to items of income or capital.
6. The Federal Republic of Germany reserves the right to exclude from the scope of Part VI any facts determined as part of a “mutual agreement on facts” (“tatsächliche Verständigung”) – as defined in the German Federal Ministry of Finance circular of 30 July 2008 (Federal Tax Gazette I 2008, p. 831), as amended, or any subsequent regulation – between the tax administration of a Contracting Jurisdiction and the taxpayer.

Additional note