Selected Issues of MLC Amount A for Developing and African countries

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OUTLINE

Entry into force

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Review and termination Governance framework under MLC

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ENTRY INTO FORCE

"Two conditions must be met in order for the MLC to come into force:

1. 30 states must deposit their instruments of ratification and
2. States/ jurisdictions that collectively have 600 points must deposit their instruments of ratification .'

Jurisdiction	Points
Belgium	9
Canada	6
China (People’s Republic of)	94
Denmark	4
France	56
Germany	45
Hong Kong (China)	88
India	15
Ireland	21
Japan	47
Korea	11
Mexico	2
Netherlands	15
Saudi Arabia	2
Spain	15
Switzerland	34
United Kingdom	49
United States	486

Entry into force: Scenarios

All European countries sign

Amount: 229

All African countries sign and India

Amount : 15

All G20 countries sign

Amount:

USA, China and Hong Kong sign

Amount: 668

African countries signing is inconsequential in terms of points. However, this will still help towards meeting the first condition of entry into force. The MLC however cannot come into force without USA support.

Decision making for key areas: Review and termination

The review of the threshold from **20 billion Euros to 10 billion Euros** can only happen once implementation of the convention is deemed to be successful. If there are any objections to this from a simple majority or 20 countries that represent a total of 600 points, then the review of the threshold to 10 billion Euros is blocked.

The MLC can not be terminated without countries with total points of 550 voting to do so.

Developing/ African countries will have very little bargaining power in some of these critical areas.

Decision making for key areas: Review and termination

What is a digital tax? (‘tripartite rule’)Stricter rules have been introduced for the definition of DSTs and similar measures. Parties will not be allowed to collect revenue from Amount A if they have DSTs or similar measures (Article 37)

- It is defined through user/ consumer location / other market-based criteria
- It primarily targets non-residents (de jure and de facto) This means that even if the legislation does not outrightly provide for the targeting of non –residents if certain features result in this by fact, then it is deemed to be a DST. Such features can include revenue thresholds, specific activities- this means that the Nigerian significant economic presence rules can be determined to be a similar measure under this.
- Outside the scope of DTAs (It is not considered to be an income tax)
- There is also a tattletale provision (Annex H): It allows parties to bring to the attention of the COP a jurisdiction that has introduced a DST. The COP then decides if it is allowable. If not, an advisory panel can be formulated.

Decision making and dispute resolution: Conference of Parties

The Conference of Parties: Their main powers are to interpret provisions of the MLC.

- It should be noted however that all the decisions of the COP must be adopted by consensus.
- Dispute resolution will follow MAP. However, if there is no resolution, then binding arbitration will be necessitated.

CONCLUSION

- It simply is not in the best interests of African/ developing countries to sign or ratify this instrument.
- The MLC is however not likely to come into force anytime soon.