6 BEPS Actions

Key insights

- Regarding Action 3, the use of Controlled Foreign Corporation (CFC) rules is widespread, with 53 jurisdictions indicating that CFC rules were in place in 2024, a slight increase from the number in 2019 where 49 jurisdictions had such rules in place.
- Regarding Action 4, the use of Interest Limitation Rules (ILRs) has seen more substantial growth, with 100 in place worldwide amongst IF members, a significant increase from the 67 jurisdictions with them in place in 2019.
- Regarding Action 5, forty-three IP regimes were found to be not harmful, one was found to be potentially harmful but not actually harmful and one was found to be harmful. Six regimes were in the process of being amended or eliminated since they were not compliant with the base erosion and profit shifting (BEPS) Action 5 minimum standard. Ten regimes were abolished by 2024.
- Of the 43 non-harmful intellectual property (IP) regimes, all 43 offer benefits to patents, 32 offer benefits to copyrighted software and 19 offer benefits to the third allowed category of assets that are restricted to small and medium-sized enterprises (SMEs).
- Tax rate reductions for the 43 non-harmful IP regimes range from a full exemption from tax to a reduction of about 40% of the standard tax rate.
- Regarding Action 13, for the fiscal year 2021, 101 jurisdictions have laws in place requiring mandatory filing of CbCRs.
- Five of the six regimes that are in the process of being amended or eliminated offer a full exemption from taxation for IP income.

Introduction

The OECD/G20 BEPS Project was designed to address tax avoidance and double non-taxation of multinational enterprise (MNE) profits by closing gaps that had emerged in the international tax system in the wake of globalisation. The 15 actions of which four are “minimum standards” are designed to equip governments with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created.

This chapter contains information on the implementation of four different BEPS Actions worldwide. The Inclusive Framework is moving forward with the implementation of the BEPS minimum standards and continues to peer review the progress of each Inclusive Framework member.

Action 3: Controlled Foreign Company (CFC) Rules

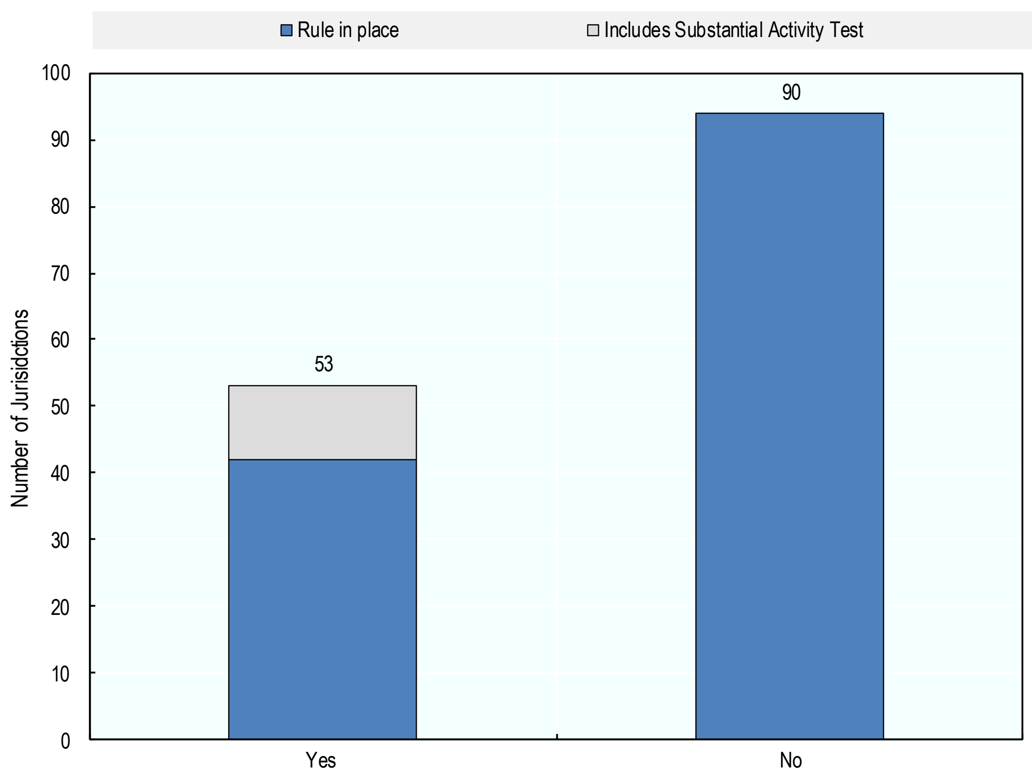
The 2015 BEPS Action 3 report sets out recommended approaches to the development of controlled foreign company (CFC) rules to ensure the taxation of certain categories of MNE income in the jurisdiction of the parent company in order to counter certain offshore structures that result in no or indefinite deferral of taxation. Comprehensive and effective CFC rules have the effect of reducing the incentive to shift profits from a market jurisdiction into a low-tax jurisdiction (Clifford, 2019[1]).

The OECD gathers information on progress related to the implementation of Action 3, namely:

- whether a jurisdiction has CFC rules in place;
- the definition of CFC income;
- whether CFC rules include a substantial economic activity test and, if so, the nature of the test;
- whether any exceptions apply.

This information presented in the *Corporate Tax Statistics* database pertains to the rules in place in 2024.

Figure 6.1. Controlled Foreign Company Rules, 2024



Source: OECD Corporate Tax Survey 2024

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Information on the presence of CFC rules is available for all Inclusive Framework member jurisdictions[1]. Of these, Figure 6.1 shows that 53 jurisdictions indicated that CFC rules were in place in 2024, a slight increase from the number in 2019 where 49 jurisdictions had these rules in place (OECD, 2020[2]). Many jurisdictions may not have a strong need to implement CFC rules as they may not be the UPE jurisdiction of a large number of MNEs.

In general, a CFC is defined as a foreign company that is either directly or indirectly controlled by a resident taxpayer. Jurisdictions apply a variety of criteria to determine control. Some approaches make reference to voting rights held by resident taxpayers or to shareholder value held by resident taxpayers. Others stipulate that a foreign company is a CFC if it carries out its operations in a low-tax jurisdiction. Others base CFC designation on a taxation test (i.e., if the foreign company does not pay tax in its jurisdiction of residence). Jurisdictions also vary in their definitions of CFC income, with some applying CFC rules to any type of income while others apply them to only passive income (i.e., income from interest, rental property, dividends, royalties or capital gains).

Action 4: Interest Limitation Rules (ILR)

The OECD/G20 BEPS project identified the deductibility of interest expense as an important area of attention. In particular, profit shifting can arise from arrangements using third party debt (e.g., where one entity or jurisdiction bears an excessive proportion of the group's total net third party interest expense) and intragroup debt (e.g., where a group uses intragroup interest expense to shift taxable income from high tax to low tax countries).

In response, the 2015 BEPS Action 4 report focused on the use of all types of debt giving rise to excessive interest expense or used to finance the production of exempt or deferred income. In particular, the Action 4 final report established rules that linked an entity's net interest deductions to its level of economic activity within the jurisdiction, measured using taxable earnings before interest income, tax, depreciation and amortisation (EBITDA) (OECD, 2015[3]). This included three main elements:

- A fixed ratio rule based on a benchmark net interest/EBITDA ratio;
- A group ratio rule allowing an entity to deduct more interest expense based on the position of its worldwide group; and
- Targeted rules to address specific risks not addressed by the general rule.

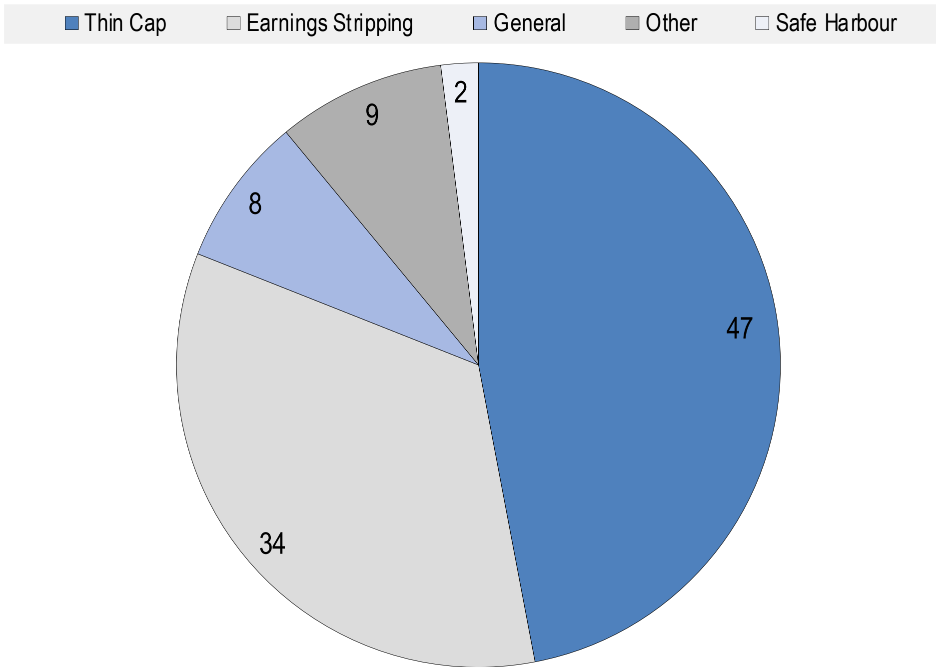
Further work on two aspects of the approach outlined in the Action 4 report was completed in 2017 (OECD, 2016[4]). The first addressed key elements of the design and operation of the group ratio rule, focusing on the calculation of net third party interest expense, the calculation of group-EBITDA and approaches to address the impact of entities with negative EBITDA. The second identified features of the banking and insurance sectors which can constrain the ability of groups to engage in BEPS involving interest, together with limits on these constraints, and approaches to deal with risks posed by entities in these sectors.

The OECD gathers information on progress related to the implementation of Action 4, namely, whether a jurisdiction has an interest limitation rule in place and, if so, the main design features of the rule. Design features include:

- the type of rule (e.g., thin capitalisation, earnings stripping),
- the financial ratio referenced,
- whether the rule is applicable to net or gross interest,
- whether the rule is applicable to related party debt and/or third party debt,
- whether a de minimis threshold is present,
- whether any exclusions apply, and
- whether any loss carry-back or carry-forward provisions apply.

This information is presented in this edition of *Corporate Tax Statistics* and pertains to the rules in place in 2024.

Figure 6.2. Interest Limitation Rule types, 2024



Source: OECD Corporate Tax Survey 2024
Note: Interest Limitation Rules are in place in 100 jurisdictions

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Information on the presence of interest limitation rules is available for all Inclusive Framework member jurisdictions. Of these, Figure 6.2 shows that 100 indicated that interest limitation rules were in place in 2024. This is a substantial increase from the 67 jurisdictions reporting rules in place for 2019. Of the 100 jurisdictions that had interest limitation rules, the most common involved was thin capitalisation rules (47 jurisdictions), followed by earnings stripping rules (34 jurisdictions).

Thin capitalisation rules disallow the tax deductibility of intra-firm interest payments if the size of these expenses exceeds a threshold, where the threshold is based on debt-to-equity or debt-to-assets ratios. Thin capitalisation rules most commonly reference a debt-to-equity ratio (though a debt-to-assets ratio is used in some jurisdictions), where the ratio values range from 0.3:1 in Brazil (i.e., interest payments are fully deductible only if the indebtedness of the Brazilian borrowing does not exceed 30% of the borrower's net equity) to 6:1 for banks and insurance companies in the Czech Republic, with ratios of 2:1, 3:1 and 4:1 being most common.

Earnings stripping rules restrict tax deductibility if the ratio of interest to EBITDA exceeds a certain threshold. A financial ratio rule based on interest to EBITDA is known as a fixed ratio rule, and is the approach recommended in the Action 4 report. While OECD guidance recommends the use of EBITDA in the denominator, it also allows for the flexibility to introduce rules based on earnings before interest and taxes (EBIT). There may also be interest limitation rules that make reference to other ratios, such as Denmark's rule that applies the ratio of interest to the tax value of total assets. Among the 34 jurisdictions with earnings stripping rules, the most commonly referenced ratio was interest-to-EBITDA (32 jurisdictions), with ratio values ranging from 20% to 50%, with 30% being the most common ratio (27 jurisdictions).

Action 5: Intellectual Property (IP) Regimes

The *Corporate Tax Statistics* database also includes information on IP regimes. Many jurisdictions have implemented IP regimes, which allow income from the exploitation of certain IP assets to be taxed at a lower rate than the standard statutory corporate income tax rate (STR).

IP regimes may be used by governments to support research and development (R&D) activities in their jurisdiction. In the past, IP regimes may have been designed in a manner that incentivised firms to locate IP assets in a jurisdiction regardless of where the underlying R&D activities were undertaken. However, the nexus approach of the BEPS Action 5 minimum standard now requires that tax benefits for IP income are conditional on the extent to which a taxpayer has undertaken the R&D activities that produced the IP asset in the jurisdiction providing the tax benefits.

The information reported for each IP regime in the *Corporate Tax Statistics* database is:

- the name of the regime;
- the qualifying IP assets;
- the reduced rate that applies under the IP regime;
- the status of the IP regime as determined by the OECD's Forum on Harmful Tax Practices (FHTP).

The *Corporate Tax Statistics* database draws on the detailed information collected by the FHTP for its peer reviews of preferential tax regimes. The information and the status presented are correct as of February 2024. Changes to regimes that have been legislated in 2024 but are not effective until 2025 are not reflected in this edition of the database.

What qualifies as an intellectual property regime?

IP regimes can be regimes that exclusively provide benefits to income from IP, but some regimes categorised as IP regimes are "dual category" regimes. These regimes also provide benefits to income from other geographically mobile activities or to a wide range of activities and do not necessarily exclude income from IP.

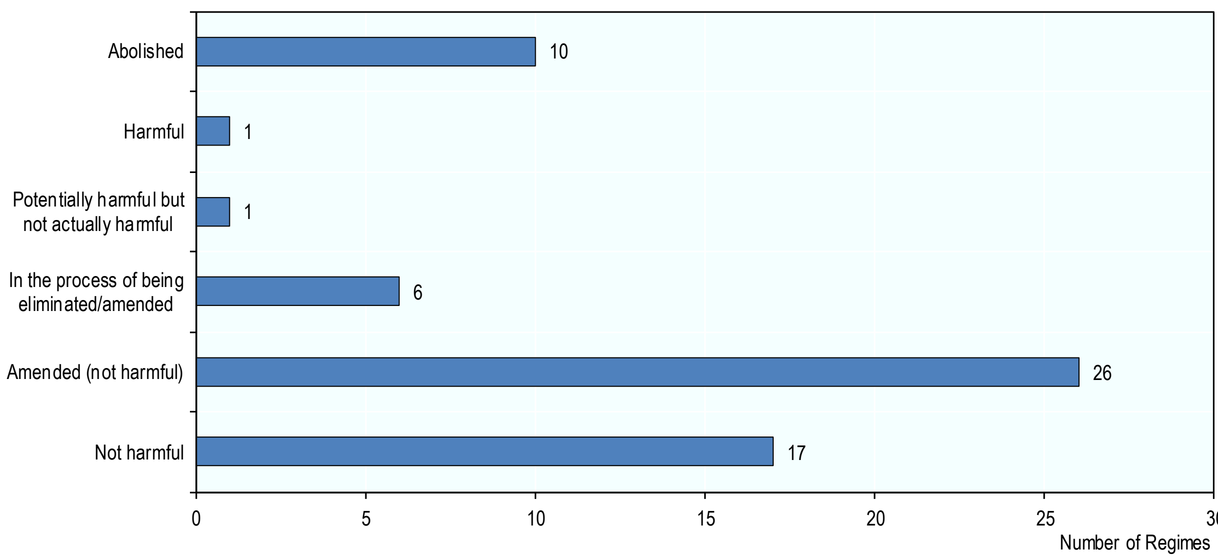
The *Corporate Tax Statistics* database shows information both on regimes that narrowly target IP income and on regimes that offer reduced rates to IP income and other types of income. Of the 61 IP regimes contained in the database, 34 were reviewed by the FHTP as IP regimes only and 27 were reviewed as "dual category" regimes (IP and non-IP regimes).

Status of intellectual property regimes

On the basis of the features of the regime, IP regimes are found to be either: harmful (because they do not meet the nexus approach), not harmful (when the regime does meet the nexus approach and other factors in the review process), potentially harmful (when the regime does not meet the nexus approach and/or other factors in the review process, but an assessment of the economic effects has not yet taken place), or potentially harmful but not actually harmful (when the regime does not meet the nexus approach and/or other factors in the review process, but an assessment of the economic effects has taken place). Regimes may also be in the process of being amended or eliminated (when the regime may not meet the nexus approach and/or other factors in the review process and is being modified or abolished as a result). The peer review process is ongoing, and by 2024 the vast majority of regimes were fully aligned with the Action 5 minimum standard. These are listed with the status "Not harmful" or "amended (not harmful)". Regimes that were already closed to new entrants in 2024 (according to the peer reviews approved by the Inclusive Framework in February 2024) were listed as "abolished" in the database, although continuing benefits may be offered for a defined period of time to companies already benefiting from the regime. In most cases, this grandfathering would end by 30 June 2024. There were ten IP regimes listed as abolished in 2024.

The *Corporate Tax Statistics* database contains information on 61 IP regimes that were in place in 46 different jurisdictions in the year 2024 as shown in Figure 6.3. Forty-three regimes in total were found to be not harmful; 26 of these regimes were found to be not harmful after having been amended to align with the Action 5 minimum standard. One regime was found to be potentially harmful but not actually harmful (in Brunei Darussalam) and one regime (in Trinidad and Tobago) was found to be harmful. Six regimes are in the process of being amended or eliminated.

Figure 6.3. Status of intellectual property regimes in place in 2024



Source: OECD Forum on Harmful Tax Purposes

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Qualifying assets and reduced tax rates

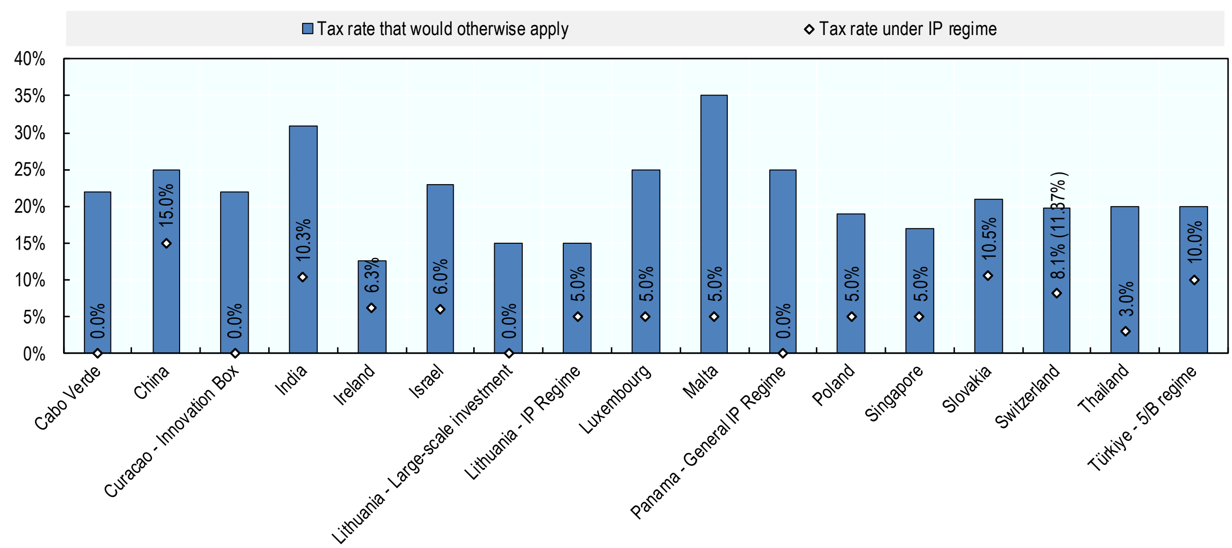
In the *Corporate Tax Statistics* database, qualifying assets of IP regimes are grouped into three main categories: patents, software and Category 3. These correspond to the only three categories of assets that may qualify for benefits under the Action 5 minimum standard: 1) patents defined broadly; 2) copyrighted software; and 3) in certain circumstances and only for SMEs, other IP assets that are non-obvious, useful and novel. The Action 5 Report explicitly excludes income from marketing related intangibles (such as trademarks) from benefiting from a tax preference. If a regime does not meet the Action 5 minimum standard, then the assets qualifying for the regime may not fall into the three allowed categories.

Of the 43 regimes found to be not harmful, all 43 regimes cover patents, 32 cover software, and 19 regimes cover assets in the third category (Category 3). All seven regimes that are in the process of being eliminated or amended do not have any restrictions on the type of income that qualifies for a reduced rate, although other restrictions may apply, (e.g. to certain industries). The reduction in the rate on IP income varies among the regimes, and some regimes offer different rates depending, for example, on the type of income (e.g., royalties or capital gains income) or size of the company.

Among the 43 regimes found to be not harmful, the tax benefit offered ranges from a full exemption to a reduction of about 40% of the tax rate that would have otherwise applied. The most common reduction is a 50% reduction. The reduced rates range from 0% (in 13 jurisdictions) to 18.75% (Korea's Special taxation for transfer, acquisition, etc. of technology; this IP regime offers reduced rates ranging from 5% to 18.75%). Five of the six regimes that are in the process of being amended or eliminated offer a full exemption from taxation for IP income.

For each of the 43 non-harmful IP regimes, Figure 6.4 and Figure 6.5 show the lowest reduced rate offered under the regime and the tax rate that would otherwise apply. Figure 6.4 shows those regimes with the status non-harmful, while Figure 6.5 shows the regimes that have been amended to be non-harmful. The tax rate that would otherwise apply is typically the STR, but it may not include certain surtaxes or sub-central government taxes. Similar to the reduced rate, the tax rate that would otherwise apply may also fall into a range, for example, if the standard statutory rate depends on the level of profits. Therefore, the tax rates shown in the figures are illustrative and do not detail the full range of tax reductions offered in each IP regime.

Figure 6.4. Reduced rates under non-harmful intellectual property regimes, 2024



Note: IP income in Switzerland can benefit from a 90% exemption of qualifying IP income from cantonal taxation. However, this exemption is subject to a cap: only 70% of a firm's total profits (IP or non-IP) can be exempt. The canton of Zurich is chosen as the representative canton. The 8.11% in 2024 applies to qualifying IP income and assumes that the firm has sufficient other income (non-qualifying IP or non-IP income) that is taxed at higher rates so that it is not subject to the 70% maximum relief limitation. If the firm had enough qualifying IP income that the 70% maximum relief limitation did apply, the rate applied to IP income in the city of Zurich would increase steadily from 8.11% to 11.37% in 2024 (100% IP Income). Where multiple rates are available for royalties or capital gains, the rate applicable to royalties has been used.

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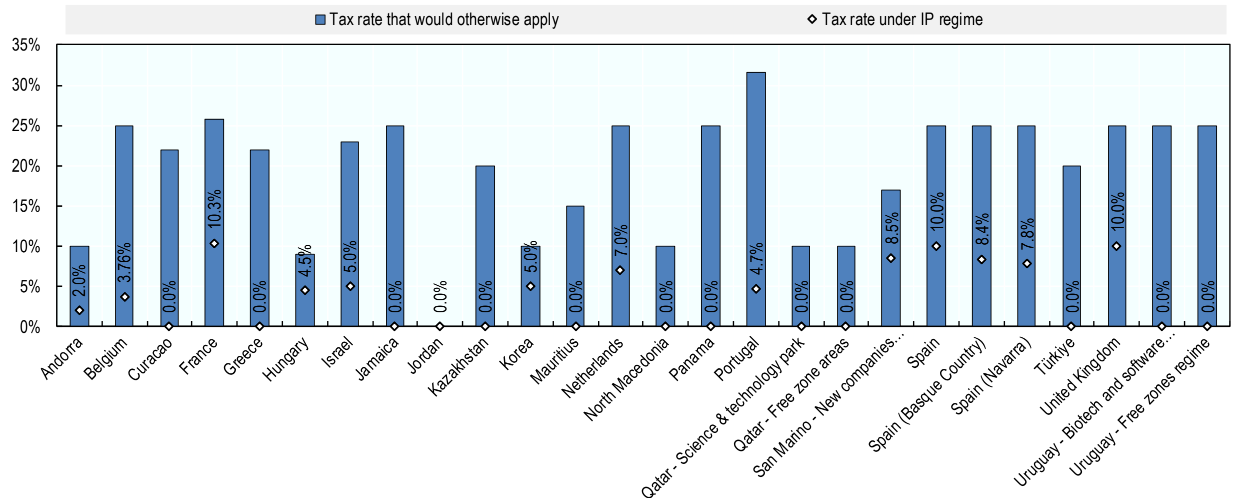
Figure 6.5. Reduced rates under non-harmful (amended) intellectual property regimes, 2024



Note: Where multiple rates are available for royalties or capital gains, the rate applicable to royalties has been used.

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Action 13: Country-by-Country Reporting (CbCR) implementation

BEPS Action 13 is part of the transparency pillar of the OECD/G20 BEPS project. In many cases, jurisdictions already have rules in place to deal with BEPS risks posed by MNE groups but may not previously have had access to information to identify cases where these risks arise. BEPS Action 13 helps to address this by providing new information for use by tax administrations in high-level transfer pricing risk assessment and the assessment of other BEPS-related risks.

For the fiscal year 2022, 102 jurisdictions have laws in place requiring mandatory filing of Country-by-Country Reports (CbCRs). (Figure 6.6).

Feedback from tax administrations indicates that they are using CbCRs to combat BEPS, in combination with other tools: (i) to help identify MNE groups for possible audit, (ii) to help identify MNE groups that do not need to be audited (de-selection), and (iii) to help plan audits or other enquiries. The specific approaches adopted vary depending upon each tax administration's general approach to risk assessment. Two important points to note on the role of CbCRs include:

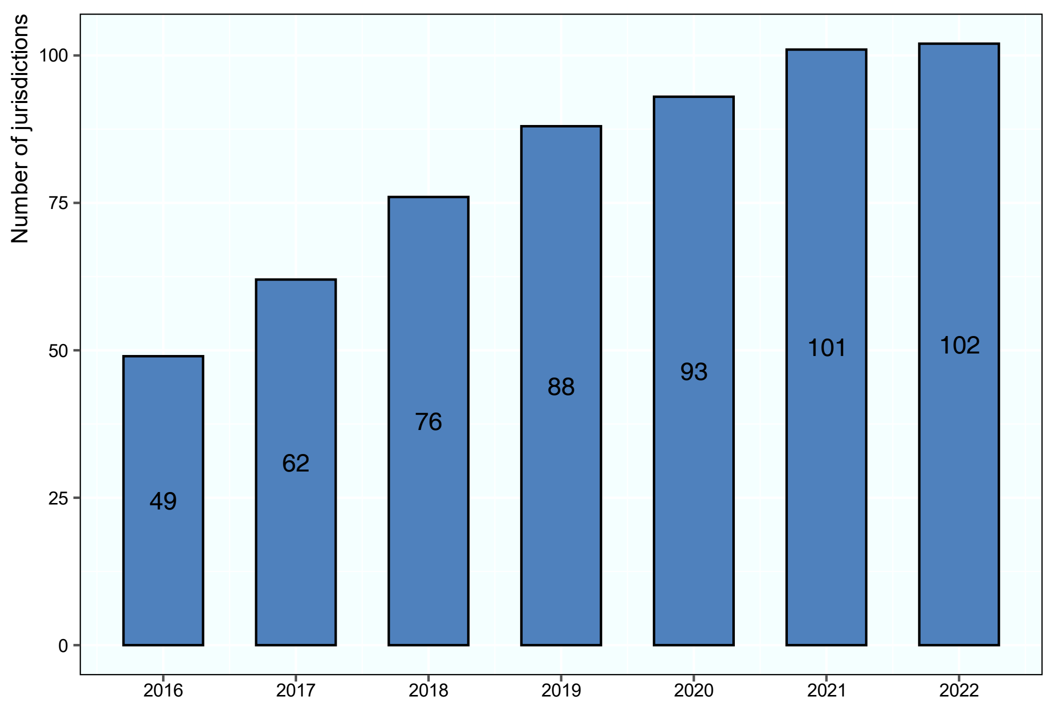
- **CbCRs may only be used in a high-level risk assessment of an MNE.** CbCRs may not be used as evidence that BEPS exists or as a substitute for substantive enquiries and should be used alongside other information available to tax administrations. It is unlikely that success in particular cases will be able to be attributed to CbCRs specifically.
- **There may be a significant time delay between a CbCR being filed and the outcomes of a transfer pricing audit.** CbCRs may be used for the purposes of a high-level risk assessment and in planning a tax audit, but it will only be determined whether an MNE group is in fact engaged in BEPS once further enquiries are completed, which may take a number of years.

While CbCRs are an important tool, tax administrations are using them in concert with a range of other tools in their efforts to combat BEPS. The OECD has developed several tools to support tax administrations in using CbCRs and, in particular, in undertaking multilateral activity to risk assess MNE groups. These include regular CbCR risk assessment workshops; the CbCR Tax Risk Evaluation and Assessment Tool (TREAT) for tax administrations; a Tax Risk Assessment Questionnaire (TRAQ), which is used in the

International Compliance Assurance Programme (ICAP) provided by a tax administration to an MNE group with an invitation to explain key indicators of possible risk; and the CbCR Effective Risk Assessment Handbook, released in 2017.

The number of jurisdictions providing aggregated and anonymised CbCR statistics has increased yearly since their introduction in 2016. Figure 6.7 shows that the total number of jurisdictions that could potentially provide CbCR statistics to the OECD increased from 58 in 2016 to 102 in 2022. This total is calculated as the number of jurisdictions that have implemented mandatory CbCR filing along with those that accepted voluntary filing in the specific year. For example, in 2016, 49 jurisdictions implemented mandatory filing while a further 9 accepted voluntary filing. The number of jurisdictions that provided CbCR statistics increased from 26 to 52 over the same period. Despite the large increase in the number of jurisdictions that could potentially submit CbCR statistics the number of jurisdictions that did not provide CbCR statistics to the OECD has only increased from 32 to 44 with an additional five jurisdictions reporting that they have received zero CbCRs in 2021. Many jurisdictions receive too few CbCRs to be able to provide the statistics under their confidentiality standards.

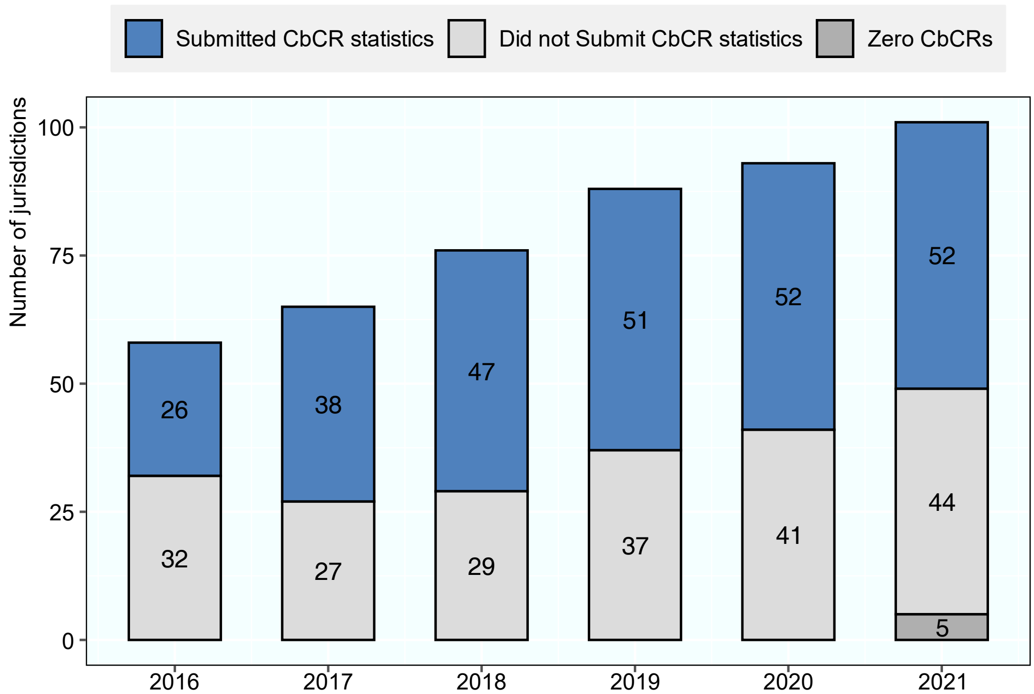
Figure 6.6. Number of jurisdictions implementing mandatory CbCR filing



Source: Action 13 Automatic exchange portal (https://oe.cd/3Kj).

StatLink https://stat.link/d1iyuv

Figure 6.7. The evolution of CbCR coverage



Source: Anonymised and Aggregated CbCR statistics and OECD Country-by-Country Reporting Requirements.

StatLink https://stat.link/97z6nc

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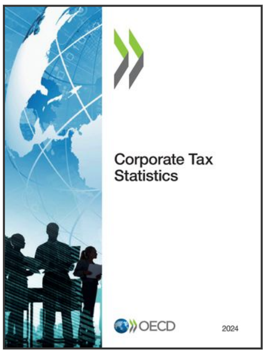
Note

[1] Covers 143 IF members as of the 1st January 2024.



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