

5 Difficulties in implementing the minimum standard

68. The peer review provides jurisdictions that encounter difficulties in reaching agreement with another jurisdiction to implement the Action 6 minimum standard with an opportunity to raise concerns with the OECD Secretariat. This process, which is set out in paragraph 35 of the Revised Peer Review Documents, was initially put in place in the 2017 Peer Review Documents (paragraph 19) to identify cases where a jurisdiction is facing a treaty partner that is a member of the Inclusive Framework that is unwilling to respect its commitment to implement the minimum standard. The process was examined as part of the review of the peer review methodology, and it was determined that the process was adequate as it stood and no changes were needed.

Concern regarding the CARICOM Agreement

69. In the course of the 2019 peer review, a jurisdiction raised a concern about the Agreement among the Member States of the Caribbean Community (CARICOM), a multilateral agreement concluded by eleven jurisdictions, ten of which are members of the Inclusive Framework. In the 2020 peer review, jurisdictions that are parties to the CARICOM Agreement were encouraged to bring that agreement up to date by commencing talks among all the treaty partners. This concern remained this year as the parties to the CARICOM Agreement have not yet modernised it.

70. The CARICOM Agreement was concluded in 1994 to encourage regional trade and investment within the CARICOM, and contains several unusual features,¹ not found in the OECD Model Tax Convention or UN Model Double Taxation Convention, which could lead to certain income flows escaping tax altogether. These departures from standard tax treaty provisions may have encouraged greater economic integration within the CARICOM at the time, but they may also have made the Agreement more vulnerable to treaty shopping and other forms of abuse.

71. Updating the CARICOM Agreement requires agreement by all eleven jurisdictions that are parties to that agreement. Previous attempts to renegotiate the CARICOM Agreement have proven to be difficult. Recent events (e.g. natural disasters such as hurricanes and volcanic eruptions in the region, and the Covid-19 pandemic) also made it difficult to launch discussions on the modernisation of the Agreement.

72. The Secretariat has contacted the jurisdictions that are parties to the CARICOM Agreement and members of the Inclusive Framework² as part of the 2021 Action 6 peer review process. It was acknowledged that the CARICOM Agreement does not at this stage comply with the minimum standard and that discussions to bring this agreement up to date would be contemplated.³ Governments have been made aware and it is expected that in time a review of the CARICOM Agreement will be conducted.

Other concerns

73. The revised peer review methodology has shed light on a number of instances where jurisdictions disagreed on the method of implementation of the minimum standard (outside the process described above on raising concerns on difficulties in reaching agreement with another jurisdiction). This typically involves cases where one jurisdiction signed the MLI and listed an agreement to be covered, while the other did not sign the MLI and expressed a preference to pursue bilateral negotiations (or where the other jurisdiction did sign the MLI but did not list an agreement to be covered, i.e. one-way agreements). As set out in paragraphs 10 to 12 of the Revised Peer Review Documents, it is understood that the way in which the minimum standard will be implemented in each bilateral agreement will need to be agreed to between the contracting jurisdictions. While the MLI provides an effective way for jurisdictions that choose to apply the PPT to implement the minimum standard swiftly, participation in the MLI is not mandatory and jurisdictions may prefer to meet the minimum standard in different ways.

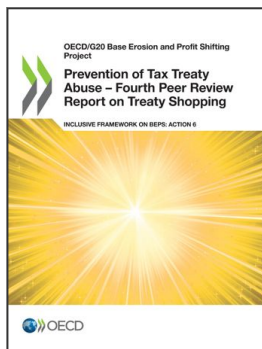
74. That said, it has been observed that several members of the Inclusive Framework wishing to implement the minimum standard through bilateral renegotiations have, on the same occasion, requested that their treaty partner also introduce other elements – unrelated to the minimum standard – in their agreements. While jurisdictions will understandably want to conserve resources and renegotiate different aspects of an agreement in the course of a single renegotiation process, agreeing to implement the minimum standard should not be made conditional upon any additional amendment being made to an agreement.

Notes

¹ The CARICOM Agreement provides for an almost exclusive source-based taxation of all income, gains and profits. Some income – for instance, dividends – are also entirely exempted from tax under the CARICOM Agreement.

² The following eleven jurisdictions are parties to the CARICOM Agreement : Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana*, Jamaica, St Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

³ Revisions to the CARICOM Agreement require an agreement from its eleven treaty partners.



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