

Executive Summary

1. The minimum standard on treaty shopping included in the Report on Action 6 is one of the four BEPS minimum standards. Action 6 of the BEPS Project identified treaty abuse, and in particular treaty shopping, as one of the principal sources of BEPS concerns. Owing to the seriousness of treaty shopping, jurisdictions have agreed to adopt, as a minimum standard, measures to address it, and to subject their efforts to an annual peer review (OECD, 2017^[1]). (OECD, 2021^[2]). The Inclusive Framework on BEPS published reports for each of the three peer review processes carried out in 2018, 2019 and 2020 (OECD, 2019^[3]) (OECD, 2020^[4]) (OECD, 2021^[5]).
2. This 2021 peer review report reflects the fourth peer review process on the implementation of the Action 6 minimum standard. It contains the aggregate results of the peer review, background information on treaty shopping in Chapter 7, and the 139 “jurisdictional sections” which provide detailed information on the implementation of the minimum standard for each member of the Inclusive Framework in Chapter 8. This fourth peer review process was governed by a revised peer review methodology, discussed in Section 2 below.
3. In 2021, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) has continued to significantly expand the implementation of the minimum standard for the jurisdictions that have ratified it.
4. Indeed, the number of compliant agreements concluded between members of the Inclusive Framework and covered by the MLI almost doubled, from approximately 350 to more than 650 (out of around 710 compliant agreements), between the 2020 and 2021 peer reviews. More than 960 additional agreements will shortly become compliant under the MLI, once all Signatories to the MLI will have ratified it. In total, nearly 70% of the agreements concluded among the members Inclusive Framework is being brought into compliance under the MLI. Jurisdictions that have not signed or ratified the MLI have generally made significantly slower progress compared with those that have.
5. In total, as at 30 June 2021, around 2,330 agreements concluded between members of the Inclusive Framework are either compliant, subject to a complying instrument, subject to steps taken by at least one treaty partner to implement the minimum standard, or the object of a general statement by one treaty partner that it intends to use the detailed Limitation-on-benefits rule (LOB) to implement the minimum standard in all its bilateral agreements.
6. This year’s peer review further reveals jurisdictions’ plans to implement the minimum standard in non-compliant agreements concluded with other members of the Inclusive Framework, that are not already subject to a complying instrument or general statement on the detailed LOB, and in respect of which no steps have been taken to implement the minimum standard (and where no reasons were provided why, for that member, the tax agreement does not give rise to material treaty-shopping concerns). The vast majority of these plans involve the application of the MLI to the concerned agreements. Once all plans to implement the minimum standard are in effect, the minimum standard will be implemented, or on course to being implemented, in nearly all of the agreements concluded between members of the Inclusive Framework.

7. Finally, recommendations were made in this year's peer review to jurisdictions that must formulate a plan for the implementation of the minimum standard, and to those that have signed the MLI but have not yet completed the steps for the entry into effect of its provisions.

Context and background to the peer review

8. This fourth report on the implementation of the Action 6 minimum standard reflects the first peer review process carried out under the revised peer review methodology.

9. The peer review processes for 2018, 2019 and 2020 were carried out following an agreed approach that was set out in a document published on 29 May 2017, and that formed the basis on which the peer review process was undertaken (the 2017 Peer Review Documents) (OECD, 2017^[1]). The 2017 Peer Review Documents included the Terms of Reference which set out the criteria for assessing the implementation of the Action 6 minimum standard, and the methodology setting out the procedural mechanism by which the review would be conducted.

10. In 2021, members of the Inclusive Framework on BEPS approved a revised methodology in the 2021 Peer Review Document (OECD, 2021^[2])¹, which governs the conduct of this year's and future years' peer reviews of the Action 6 minimum standard.

11. As in previous years, jurisdictions were required to complete a peer review questionnaire by 31 May 2021, reporting on the status of the implementation of the minimum standard in all of their comprehensive income tax agreements in force on that date (including agreements with jurisdictions that are not Inclusive Framework members). For each tax agreement listed, members indicated whether or not it complied with the minimum standard and, if not, whether it was on course to becoming compliant with the minimum standard.

12. However, under the revised methodology, jurisdictions' progress in implementing the minimum standard has been measured in greater detail.

13. The changes to the peer review methodology were agreed as part of the review process that was set out in of the 2017 Peer Review Documents. Paragraph 14 of the 2017 Peer Review Documents provided that the methodology for the review of the implementation of the minimum standard on treaty shopping would be reviewed in 2020 in light of the experience in conducting that review.

14. The objective of the revised methodology (explained in further detail in Chapter 7) is to establish a framework through which assistance would be given to a member jurisdiction that had non-compliant agreements with members of the Inclusive Framework that could, on its own assessment, create treaty-shopping opportunities and for which the jurisdiction had not yet taken steps to bring them into compliance with the minimum standard.

15. This year's peer review process resulted in a new and expanded data set on the status of jurisdictions' implementation of the Action 6 minimum standard. Jurisdictions have reported on their progress in the implementation of the minimum standard in much greater detail. In particular, jurisdictions have been invited to report additional information for every agreement with a jurisdiction member of the Inclusive Framework that neither complied with the minimum standard nor was subject to a complying instrument (e.g. the MLI or a signed amending instrument resulting from bilateral negotiations). Jurisdictions that have signed the MLI but not ratified it have also been invited to provide additional information on their ratification process.

16. As part of the new framework, jurisdictions have formulated plans, where relevant, for the implementation of the minimum standard in certain of their agreements. This concerns agreements concluded with other members of the Inclusive Framework that are not compliant or subject to a complying instrument, for which no steps have yet been taken to implement the minimum standard, and where no

statement has been made that a treaty partner intends to use a detailed limitation-on-benefits provision as part of the implementation of the minimum standard in all its bilateral tax agreements.

17. The assistance provided to jurisdictions under the revised methodology also includes the issuance of recommendations, contained in this report. These recommendations are, where relevant: to formulate a plan for the implementation of the minimum standard if one was not already in existence; and to complete the steps to have the MLI take effect where a jurisdiction is using the MLI to implement the minimum standard.

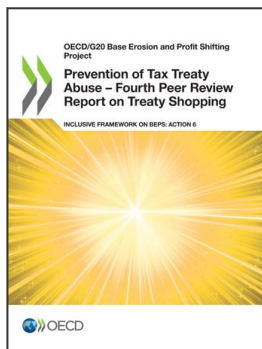
18. The implementation plans and recommendations are further discussed, respectively, in Sections 4 and 5 below, as well as the jurisdictional sections of the concerned jurisdictions, in Chapter 8.

References

- OECD (2021), *BEPS Action 6 on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – Revised Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, www.oecd.org/tax/beps/beps-action-6-preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstances-revised-peer-review-documents.pdf. [2]
- OECD (2021), *Prevention of Tax Treaty Abuse – Third Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/d6cecb8-en>. [5]
- OECD (2020), *Prevention of Treaty Abuse – Second Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/d656738d-en>.
- OECD (2019), *Prevention of Treaty Abuse - Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264312388-en>. [3]
- OECD (2017), *BEPS Action 6 on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-6-preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstance-peer-review-documents.pdf. [1]

Note

¹ Approved by the Inclusive Framework in the 2021 Peer Review Document on 17 February 2021.



From:
**Prevention of Tax Treaty Abuse – Fourth Peer
Review Report on Treaty Shopping**
Inclusive Framework on BEPS: Action 6

Access the complete publication at:
<https://doi.org/10.1787/3dc05e6a-en>

Please cite this chapter as:

OECD (2022), “Executive Summary”, in *Prevention of Tax Treaty Abuse – Fourth Peer Review Report on Treaty Shopping : Inclusive Framework on BEPS: Action 6*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/06b64640-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.