

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 five peer review processes carried out in 2018, 2019, 2020, 2021 and 2022 (OECD, 2019^[3]) (OECD, 2020^[4]) (OECD, 2021^[5]) (OECD, 2022^[6]) [(OECD, 2023)].
2. This 2023 peer review report reflects the sixth 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 “jurisdictional sections” which provide detailed information on the implementation of the minimum standard for each member of the Inclusive Framework in Chapter 8.
3. This sixth peer review process was governed by the revised peer review methodology, discussed in Section 2 below, which was first implemented in 2021.
4. In total, as at 31 May 2023, around 1,360 agreements concluded by members of the Inclusive Framework complied with the minimum standard. This represents an increase of around 30% as compared to 2022.
5. As in previous years, this year’s peer review shows that in 2023, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (BEPS MLI) continues to be a significant driver in expanding the implementation of the minimum standard for the jurisdictions that have ratified it.
6. The number of compliant agreements concluded between members of the Inclusive Framework and covered by the BEPS MLI has continued to increase steadily, growing by around 30% between 2021-2022, and by another 30% between 2022-2023. As at 31 May 2023, over 1,120 out of the 1,270 compliant agreements concluded between members of the Inclusive Framework have been brought into compliance through the BEPS MLI (with around 630 additional agreements between members of the Inclusive Framework that will become compliant under the BEPS MLI, once all Signatories to the BEPS MLI will have ratified it). Jurisdictions that have not signed or ratified the BEPS MLI have made significantly slower progress, in general, compared with those that have.
7. More broadly, as at 31 May 2023, over 2,400 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), together with a mechanism to address conduit arrangements, to implement the minimum standard in all its bilateral agreements.
8. This year’s peer review also provides updates on progress made by jurisdictions to give effect to their plans, developed in 2021 or 2022, 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 agreement does not give rise to material treaty-shopping concerns). In some cases, new implementation plans have also been developed. The majority of implementation plans involve the application of the BEPS 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.

9. Finally, similar to last year, this year's peer review continues to show that many jurisdictions have followed the recommendations made in last year's peer review, in particular by completing the steps for the entry into effect of the provisions of the BEPS MLI, as applicable.

Context and background to the peer review

10. This sixth report on the implementation of the Action 6 minimum standard reflects the third peer review process carried out under the revised peer review methodology.

11. 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.

12. In 2021, members of the Inclusive Framework on BEPS approved a revised methodology in the 2021 Peer Review Document (OECD, 2021^[2])¹, which has governed the conduct of the peer reviews of the Action 6 minimum standard as of 2021. 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.

13. The objective of the revised methodology (explained in further detail in Chapter 7) has been 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. Under this revised methodology, jurisdictions' progress in implementing the minimum standard has been measured in greater detail.

14. As in previous years, jurisdictions were required to complete a peer review questionnaire by 31 May 2023, 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 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.

15. Jurisdictions were 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 BEPS MLI or a signed amending instrument resulting from bilateral negotiations). Jurisdictions that have signed the BEPS 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. Jurisdictions have also been invited to provide updates on progress made to give effect to such plans developed in the context of the 2021 or 2022 peer review processes, and to signal difficulties encountered in that respect, if any.

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 BEPS MLI take effect where a jurisdiction is using the BEPS MLI to implement the minimum standard.

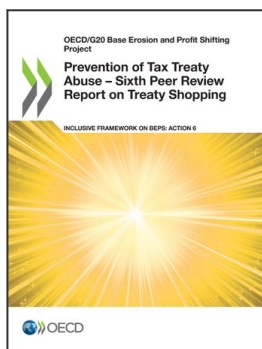
18. The implementation plans and recommendations are further discussed, respectively, in Chapters 3 and 4 below, as well as the jurisdictional sections of the concerned jurisdictions, in Chapter 8.

References

- OECD (2022), *Prevention of Tax Treaty Abuse – Fourth Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://www.oecd-ilibrary.org/sites/3dc05e6a-en/index.html?itemId=/content/publication/3dc05e6a-en>. [6]
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Note

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



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

Access the complete publication at:

<https://doi.org/10.1787/36cebf8e-en>

Please cite this chapter as:

OECD (2024), “Executive Summary”, in *Prevention of Tax Treaty Abuse – Sixth Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/669d6742-en>

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