

1 Implementation of the minimum standard: Aggregate data and key figures

19. This section sets out the aggregate data on the implementation of the minimum standard on treaty shopping included in the Report on Action 6 (OECD, 2015^[1]).

20. The minimum standard requires jurisdictions to do two things in their tax agreements: include an express statement on non-taxation (generally in the preamble); and adopt one of three methods of addressing treaty shopping. It does not specify how these two things should be achieved (e.g. through the MLI or bilaterally) (OECD, 2015^[1]).¹

21. Aggregate data on the jurisdictions' progress towards implementing the minimum standard is provided below. Detailed information on each jurisdiction's progress is provided in the jurisdictional sections in Chapter 8. The information that can be found in the "Conclusion" section in some of the jurisdictional sections in Chapter 8 further highlights the following:

- Members of the Inclusive Framework that have signed but not ratified the MLI are recommended to complete the steps to have the MLI take effect as soon as possible (Section 5 below);
- Similarly, some of the parties to the MLI that have made a reservation under the MLI to delay its entry into effect until the completion of internal procedures are recommended to complete the steps to have the MLI take effect as soon as possible (Section 5 below).²
- An implementation plan must be developed for agreements concluded with other members of the Inclusive Framework that are not compliant, not subject to a complying instrument or to a general statement on the detailed LOB, for which no steps have been taken to implement the minimum standard and no reasons have been given on why, for a jurisdiction, the agreement does not give rise to material treaty shopping concerns. Where no implementation plan has been developed in respect of such agreements, jurisdictions are recommended to develop a plan for the implementation of the minimum standard (Sections 4 and 5 below).
- The OECD Secretariat stands ready to discuss with any jurisdiction that has developed, or that needs to develop, a plan for the implementation of the minimum standard to see how support could best be provided to bring the concerned agreements into compliance with the minimum standard.
- Jurisdictions that are parties to the CARICOM Agreement are recommended to bring that agreement up to date by commencing talks among all the treaty partners (see Section 6 below).

Aggregate data and key figures

22. In total, the 139 jurisdictions of the Inclusive Framework reported 2,390 agreements (including 5 multilateral agreements) in force on 31 May 2021 among themselves, and about 890 additional

agreements between members of the Inclusive Framework and non-members.³ Eight member jurisdictions had no comprehensive tax agreements in force.⁴

23. The data collected on the implementation of the Action 6 minimum standard showed that, on 31 May 2021, 116 jurisdictions of the Inclusive Framework had some agreements that already complied with the minimum standard, that were subject to a complying instrument, in respect of which steps had been taken to implement the minimum standard, or that were subject to a general statement on the detailed LOB.⁵

24. The agreements between members of the Inclusive Framework and non-members are not subject to the peer review and the aggregate results in this chapter focus on the 2,390 agreements (including 5 multilateral agreements) entered into among members of the Inclusive Framework. The jurisdictional sections in Chapter 8 nevertheless indicate the reported status of the implementation of the minimum standard in agreements outside the peer review.⁶

Compliant agreements

25. On 31 May 2021, over 710 bilateral agreements between members of the Inclusive Framework complied with the minimum standard. An additional 60 agreements not subject to this review (i.e. agreements between members of the Inclusive Framework and non-members) also complied with the minimum standard. This represents a more than two-fold increase compared to 2020.

26. In all compliant agreements, the preamble statement and the principal purpose test (PPT) were implemented to meet the minimum standard. In 40 of those agreements, the PPT was supplemented with a LOB provision.

Agreements subject to compliant instrument

27. Many jurisdictions in the Inclusive Framework have agreements currently subject to a signed complying instrument that is not yet in force, but that would implement the minimum standard.

28. On 31 May 2021, over 960 bilateral agreements (of 2,385 bilateral) between members of the Inclusive Framework were set to become covered tax agreements under the MLI (i.e. both Contracting Jurisdictions had listed the agreement under the MLI and, as a result, the MLI will modify the agreement once in effect) and thereby to become compliant with the minimum standard. These agreements will comply with the minimum standard once the relevant provisions of the MLI take effect, following ratification by both Contracting Jurisdictions.⁷

29. A further 23 agreements between members of the Inclusive Framework are subject to a bilateral amending instrument that is not yet in force. The number of agreements subject to a bilateral amending instrument, when compared with those that are subject to the MLI, shows the comparative effectiveness of the MLI in implementing the minimum standard.

30. For the agreements listed under the MLI, all 93 members of the Inclusive Framework that are parties and signatories to the MLI are implementing the preamble statement and the PPT. Fifteen jurisdictions have also opted to apply the simplified LOB through the MLI to supplement the PPT when possible. Six additional jurisdictions agreed to accept a simplified LOB in agreements with partners that opted for it under the MLI.

Steps taken to implement the minimum standard (incl. general statement on the detailed LOB)

31. Many jurisdictions in the Inclusive Framework have non-compliant agreements that are not subject to a complying instrument, but in respect of which the jurisdictions have taken steps to enable the

agreement to become subject to a complying instrument. For example, according to the revised peer review methodology, a jurisdiction will be considered to have taken a step to implement the minimum standard in an agreement under the MLI if it has signed the MLI and listed that agreement to be covered, but its treaty partner has not done the same (Where both treaty partners have signed the MLI and listed an agreement to be covered, the MLI would instead be considered a complying instrument for that agreement.) Other steps also include entering into bilateral renegotiations with a treaty partner, agreeing to enter into such renegotiations, or contacting a treaty partner with a draft protocol, with these steps intended to implement the minimum standard.

32. While some jurisdictions have chosen only one method in their steps to implement the minimum standard (e.g. by listing all their agreements under the MLI), other jurisdictions have tailored their approach across their treaty network (e.g. by pursuing bilateral renegotiations of some agreements, and using the MLI for other agreements). The MLI remains the more widely applied step taken for the implementation of the minimum standard in non-compliant agreements, covering more than 470 agreements. Jurisdictions have also taken steps other than under the MLI to implement the minimum standard in about 240 agreements (including about 90 agreements for which a treaty partner has taken concurrent steps under the MLI). As discussed further below (Section 6) treaty partners may have taken different steps to implement the minimum standard in a given agreement, and may at this stage still be in the process of deciding which method to pursue (e.g. MLI or bilateral negotiations).

33. An additional two jurisdictions, the United States and Trinidad and Tobago, have made a general statement that they intend to use the detailed LOB as part of their commitment to implement the minimum standard in all their bilateral agreements (these two countries have between them concluded a total of 79 agreements with other members of the Inclusive Framework). The detailed LOB provision is not included in the MLI and requires substantive bilateral discussions and customisation to each tax agreement, which could take several years. If a jurisdiction makes such a statement, its treaty partners will not generally provide any additional information about their tax agreement with that jurisdiction.

34. In total, this year, around 2,330 agreements concluded between members of the Inclusive Framework are compliant, subject to a complying instrument or to steps taken by at least one treaty partner to implement the minimum standard, or are the object of a general statement by a treaty partner on the detailed limitation-on-benefits provision.

Provisions used to implement the minimum standard

35. As with previous years, this year's peer review shows that among the three alternative methods to implement the second component of the minimum standard⁸, the PPT alone remains much the most widely used. The majority of jurisdictions have chosen to implement the minimum standard using this alternative. Indeed, it is the only provision capable on its own of satisfying the second component of the minimum standard, and can be implemented using the MLI.

36. About 65 agreements are or will be brought into compliance with the minimum standard using the PPT supplemented by a detailed or simplified LOB. The MLI can be used to implement the PPT together with a simplified LOB and 14 jurisdictions have chosen this option. An additional six have agreed to implement the simplified MLI LOB in cases where their treaty partner has chosen to adopt that measure⁹.

37. As mentioned above, two jurisdictions, the United States and Trinidad and Tobago, have made a general statement that they intend to use the detailed LOB as part of their commitment to implement the minimum standard in all their bilateral agreements. In total, these statements concern 83 agreements (including 79 agreements concluded with other members of the Inclusive Framework).

Methods of implementation

38. The MLI has proven to be an effective way – indeed, the preferred way – of implementing the minimum standard. However, a jurisdiction that prefers to implement the minimum standard through a detailed limitation on benefits provision cannot use the MLI to do so. Ninety-six jurisdictions have joined the MLI (including 93 members of the Inclusive Framework), 68 have ratified it, and the MLI would, once fully in effect, implement the minimum standard in more than 1,700 bilateral agreements, thus modifying the majority of agreements concluded between members of the Inclusive Framework.

39. The efforts made by most members of the Inclusive Framework in tackling treaty shopping started to show in 2020 for those that ratified the MLI. Jurisdictions that have not signed or ratified the MLI have generally made significantly slower progress compared with those that have.

40. Nevertheless, for a number of agreements, while one jurisdiction may have signed the MLI and listed the agreement as one to be covered, its treaty partner may prefer to enter into bilateral renegotiations. As specified in the Terms of Reference, the way in which the minimum standard will be implemented in each bilateral agreement must be agreed between the contracting jurisdictions; participation in the MLI is not a minimum standard and jurisdictions may have different preferences.

References

OECD (2015), *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241695-en>. [1]

Notes

¹ The Action 6 Final Report further states that (i) a jurisdiction is required to implement the minimum standard in a treaty only if asked to do so by another member of the Inclusive Framework; (ii) the decision on which of the three methods to adopt has to be agreed (a solution cannot be imposed); and (iii) reflecting treaties' bilateral nature, there is no time limit within which a jurisdiction has to attain the minimum standard.

² The reservation under Article 35(7) MLI delays the entry into effect of the provisions of the MLI with respect to a Covered Tax Agreement until the reserving Party notifies (under Article 35(7)(b) MLI) that it has completed its internal procedures for such entry into effect. Several Parties to the MLI have made this reservation but have not yet made any notification under Article 35(7)(b) MLI. As a result, their agreements cannot yet be brought into compliance with the minimum standard under the MLI.

³ In 2020, the Inclusive Framework reported 2,295 agreements entered into between members of the Inclusive Framework. The additional 88 agreements reviewed in 2021 include new agreements entered into between members of the Inclusive Framework between 1 July 2020, and 31 May 2021, and the relevant existing agreements of the two new members of the Inclusive Framework, which agreements were not subject to the 2020 Peer Review.

⁴ Anguilla, the Bahamas, the Cayman Islands, the Cook Islands, Djibouti, Haiti, Honduras and Turks and Caicos Islands have no agreements in force.

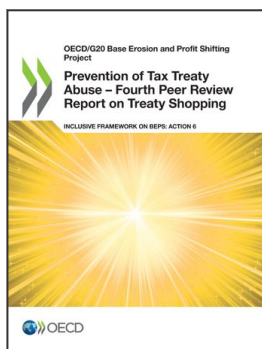
⁵ On 31 May 2021, 95 jurisdictions were signatories or parties to the MLI, but three of them (Cyprus, Fiji and Kuwait) are not members of the Inclusive Framework. Thus, as of 31 May 2021, 92 members of the Inclusive Framework were signatories or parties to the MLI; Namibia signed the MLI on 30 September 2021, bringing this number to 93. A number of additional members of the Inclusive Framework, although not signatories or parties to the MLI, have concluded amending protocols to implement the minimum standard.

⁶ A “complying instrument” could be the MLI or a suitable new amending protocol yet to enter into force. It could also be a completely new agreement that has not yet entered into force.

⁷ And, where relevant, the notification pursuant to Article 35(7)(b) MLI (see further explanations in footnote 7).

⁸ These are: the PPT, the PPT supplemented by a detailed or simplified LOB, or a detailed LOB together with an anti-conduit mechanism.

⁹ As allowed under Article 7(7) MLI.



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), “Implementation of the minimum standard: Aggregate data and key figures”, 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/10.1787/69ed930c-en>

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