

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]).

To comply with the minimum standard, jurisdictions are required to do two things in their tax agreements: include an express statement on double non-taxation (generally in the preamble) and adopt one of three measures to address treaty shopping. The minimum standard does not specify how these two things should be implemented (e.g. through the BEPS MLI or bilaterally) (OECD, 2015^[1]).¹

20. 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 BEPS MLI are recommended to complete the steps to have the BEPS MLI take effect as soon as possible (Section 5 below);
- Similarly, some of the parties to the BEPS MLI that have made a reservation under the BEPS MLI to delay its entry into effect until the completion of internal procedures are recommended to complete the steps to have the BEPS MLI take effect as soon as possible (Chapter 4 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. Once a plan is in place, a jurisdiction must provide an annual update if changes occur. 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 (Chapters 3 and 4 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.

Aggregate data and key figures

21. In total, the 142 jurisdictions of the Inclusive Framework³ reported 2,510 agreements (including 6 multilateral agreements) in force on 31 May 2023 among themselves, and about 850 additional

agreements between members of the Inclusive Framework and non-members.⁴ Eight member jurisdictions had no comprehensive tax agreements in force.⁵

22. The data collected on the implementation of the Action 6 minimum standard showed that, on 31 May 2023, 124 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.⁶

23. 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 2,510 agreements (including 6 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 scope of the peer review.⁷

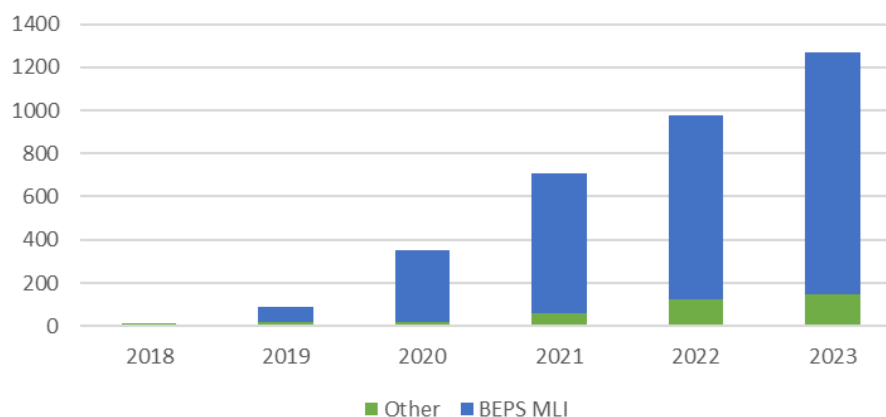
Compliant agreements

24. On 31 May 2023, over 1,270 bilateral agreements, and two multilateral agreements, between members of the Inclusive Framework complied with the minimum standard. Around 85 additional agreements not subject to this review (i.e. agreements between members of the Inclusive Framework and non-members) also complied with the minimum standard, bringing the total number of compliant agreements concluded by members of the Inclusive Framework to nearly 1,360 agreements. This represents an increase of around 30% compared to 2022.

25. In all compliant agreements, the preamble statement and the principal purpose test (PPT) were implemented to meet the minimum standard. In 52 of those agreements, the PPT was supplemented with a LOB provision.

26. The chart below illustrates the progress made, since the launch of the first Action 6 peer review process in 2018, in the implementation of the minimum standard in bilateral agreements between members of the Inclusive Framework. Over five years, the number of bilateral agreements between members of the Inclusive Framework that comply with the minimum standard increased from only 13 agreements in 2018 to over 1 270 agreements in 2023. As shown below, this increase is due mostly to the entry into effect of the provisions of the BEPS MLI.

Figure 1.1. Compliant bilateral agreements between members of the Inclusive Framework



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 (in the case of a bilateral amending instrument) or the provisions of which are not yet in effect (in the case of the BEPS MLI), but that would implement the minimum standard. These agreements are on course to shortly becoming compliant with the minimum standard.

28. On 31 May 2023, around 630 bilateral agreements (of 2,504 bilateral agreements) between members of the Inclusive Framework were set to become covered tax agreements under the BEPS MLI (i.e. both Contracting Jurisdictions have listed the agreement under the BEPS MLI and, as a result, the BEPS 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 BEPS MLI take effect, following ratification by both Contracting Jurisdictions.⁸

29. A further 22 agreements between members of the Inclusive Framework are subject to a bilateral amending instrument that is not yet in force. This number, equivalent to 3.5% of the number of agreements set to become covered tax agreements under the BEPS MLI, highlights the comparative effectiveness of the BEPS MLI in implementing the minimum standard.

30. For the agreements listed under the BEPS MLI, all 96 members of the Inclusive Framework that are parties and signatories to the BEPS ML¹⁹ are implementing the preamble statement and the PPT. Thirteen jurisdictions¹⁰ have also opted to apply the simplified LOB through the BEPS MLI to supplement the PPT when possible. Seven additional jurisdictions agreed to accept a simplified LOB in agreements with partners that opted for it under the BEPS MLI.

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

31. As provided in the revised peer review methodology, jurisdictions in the Inclusive Framework report any steps taken to implement the minimum standard in their non-compliant agreements that are not already subject to a complying instrument. These are steps that will enable the agreement to become subject to a complying instrument. For example, a jurisdiction will be considered to have taken a step to implement the minimum standard in an agreement under the BEPS MLI if it has signed the BEPS MLI and listed that agreement to be covered, but its treaty partner has not done the same. (Where both treaty partners have signed the BEPS MLI and listed an agreement to be covered, the BEPS MLI would instead be considered a complying instrument for that agreement; the agreement would later be reported as compliant with the minimum standard, by application of the BEPS MLI, once its provisions start to take effect.) 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 BEPS MLI), other jurisdictions have tailored their approach across their treaty network (e.g. by pursuing bilateral renegotiations of some agreements, and using the BEPS MLI for other agreements).

33. Since 2021, the number of agreements subject to steps taken by at least one treaty partner to implement the minimum standard has fluctuated (from around 620 in 2021, to around 520 in 2022, and around 650 in 2023). From one year to the next, the number of agreements subject to such steps is reduced by instances where progress is made to enable an agreement to become subject to a complying instrument (noting that once an agreement is subject to a complying instrument, it is no longer reported as being subject to steps taken to implement the minimum standard); concurrently, this number is increased by

instances where progress is made by at least one treaty partner to start to give effect to a plan to implement the minimum standard in an agreement.

34. As observed in 2021 and 2022, joining the BEPS MLI and listing an agreement to be covered remains the more widely applied step taken for the implementation of the minimum standard in non-compliant agreements, covering more than 450 such agreements concluded between members of the Inclusive Framework. Jurisdictions have also taken steps other than under the BEPS MLI to implement the minimum standard in about 200 agreements (including about 120 agreements for which a treaty partner has taken concurrent steps under the BEPS 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. BEPS MLI or bilateral negotiations).

35. It is also possible for a jurisdiction to make a general statement that it intends to use the detailed LOB as part of its commitment to implement the minimum standard in all of its bilateral agreements. The detailed LOB provision is not included in the BEPS 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.

36. In total, this year over 2 400 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

37. As with previous years, this year's peer review shows that among the three alternative methods to implement the second component of the minimum standard¹¹, the PPT alone remains much the most widely used. The majority of jurisdictions has 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 BEPS MLI.

38. About 85 agreements are or will be brought into compliance with the minimum standard using the PPT supplemented by a detailed or simplified LOB. The BEPS MLI can be used to implement the PPT together with a simplified LOB and 13 jurisdictions¹² have chosen this option. An additional seven have agreed to implement the simplified BEPS MLI LOB in cases where their treaty partner has chosen to adopt that measure.¹³

39. Moreover, 63 agreements are covered by a general statement by one treaty partner that it intends to use the detailed LOB as part of its commitment to implement the minimum standard in all their bilateral agreements in force on 31 May 2023.

Methods of implementation

40. As in previous years, the BEPS MLI continues to be the preferred method 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 BEPS MLI to do so. As of 31 May 2023, one hundred jurisdictions have joined the BEPS MLI (including 96 members of the Inclusive Framework)¹⁴, 81 have ratified it¹⁵, and the BEPS MLI would, once fully in effect, implement the minimum standard in more than 1,900 bilateral agreements, thus modifying the majority of agreements concluded between members of the Inclusive Framework.

41. As in previous years, jurisdictions that have not signed or ratified the BEPS MLI have generally made significantly slower progress compared with those that have.

42. Nevertheless, participation in the BEPS MLI is not a minimum standard and jurisdictions may have different preferences, 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.

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

³ The data reflected in this report also includes data on the agreements concluded by Uzbekistan. Noting that Uzbekistan joined the Inclusive Framework on 9 June 2023, which is after the reference date for this year's peer review exercise (31 May 2023), its treaty partners have not been expected to provide any additional information about their agreements with Uzbekistan.

⁴ In 2022, the Inclusive Framework members reported 2,426 agreements entered into between members of the Inclusive Framework. The additional agreements reviewed in 2023 include new agreements entered into between members of the Inclusive Framework between 1 June 2022, and 31 May 2023, and the relevant existing agreements of the new members of the Inclusive Framework, which agreements were not subject to the 2022 Peer Review.

⁵ Anguilla, the Bahamas, the Cayman Islands, the Cook Islands, Djibouti, Haiti, Honduras and Turks and Caicos Islands have no agreements in force.

⁶ On 31 May 2023, 100 jurisdictions were signatories or parties to the BEPS MLI, but four of them (Cyprus, Fiji, Kuwait and Lesotho) were not members of the Inclusive Framework. Thus, as of 31 May 2023, 96 members of the Inclusive Framework were signatories or parties to the BEPS MLI. Eswatini and Azerbaijan, members of the Inclusive Framework, signed the MLI on 27 September 2023 and 20 November 2023, respectively. Kuwait, a signatory to the BEPS MLI, became a member of the Inclusive Framework on 15 November 2023. Therefore, as of that date, 102 jurisdictions were signatories or parties to the BEPS MLI, of which 99 are members of the Inclusive Framework. A number of additional members of the Inclusive Framework, although not signatories or parties to the BEPS MLI, have concluded amending protocols to implement the minimum standard.

⁷ A “complying instrument” could be the BEPS 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.

⁸ And, where relevant, the notification pursuant to Article 35(7)(b) BEPS MLI (see further explanations in footnote 3).

⁹ Noting that Eswatini and Azerbaijan signed BEPS MLI on 27 September 2023 and 20 November 2023, respectively, and that Kuwait, a signatory to the BEPS MLI, became a member of the Inclusive Framework on 15 November 2023. As of that date, 99 members of the Inclusive Framework have joined the BEPS MLI.

¹⁰ A fourteenth jurisdiction, Eswatini, signed the BEPS MLI on 27 September 2023 and has also opted to apply the simplified LOB.

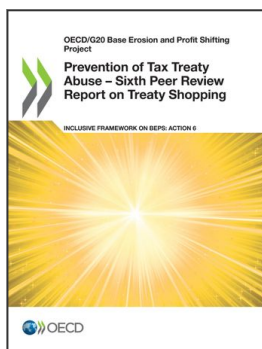
¹¹ These are: the PPT, the PPT supplemented by a detailed or simplified LOB, or a detailed LOB together with an anti-conduit mechanism.

¹² See note 10.

¹³ As allowed under Article 7(7) BEPS MLI.

¹⁴ Eswatini and Azerbaijan signed the BEPS MLI on 27 September 2023 and 20 November 2023, respectively. Kuwait, a signatory to the BEPS MLI, became a member of the Inclusive Framework on 15 November 2023. As of that date, 102 jurisdictions have joined the BEPS MLI, including 99 members of the Inclusive Framework.

¹⁵ Armenia, Côte d’Ivoire, Papua New Guinea and Tunisia deposited their instruments of ratification of the BEPS MLI after 31 May 2023. As of 1 December 2023, 85 jurisdictions have ratified the BEPS MLI.



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