

2 Key role of the BEPS MLI

Ratification of the BEPS MLI

43. Since the provisions of the BEPS MLI first started to take effect, in 2019, the BEPS MLI has rapidly strengthened the bilateral tax treaty network of jurisdictions that ratified it. The number of agreements between members of the Inclusive Framework that became compliant with the BEPS MLI has increased steadily by the hundreds each year, exceeding 1,120 as of 31 May 2023. This number continues to increase, on an ongoing basis, as additional Signatories ratify the BEPS MLI. As in previous years, the peer review continues to reveal an important difference in the progress made on implementing the minimum standard by jurisdictions that have ratified the BEPS MLI compared with other jurisdictions.

44. Over the past year, eight jurisdictions that are members of the Inclusive Framework have ratified the BEPS MLI: Armenia, Bulgaria, Côte d'Ivoire, Mexico, Papua New Guinea, South Africa, Tunisia and Viet Nam.¹

45. On average, around 55% of the treaty networks of jurisdictions for which the BEPS MLI started to take effect as of 1 January 2023,² are compliant with the minimum standard in 2023, as shown in the Table 2.1.

46. For the jurisdictions that ratified the BEPS MLI after October 2022,³ the relevant provisions of the BEPS MLI had generally not yet started to take effect for their agreements on 31 May 2023. This is because provisions of the BEPS MLI can generally only start to take effect for an agreement after a period of time that follows the latest of the dates on which the BEPS MLI enters into force for each of the partners to an agreement. This period could roughly amount to a year from the latest ratification.⁴

47. As observed in prior peer reviews, while the jurisdictions that ratified the BEPS MLI made good progress in the implementation of the minimum standard, those that did not sign or ratify the BEPS MLI made comparatively little progress, in general, in implementing the minimum standard. Only around 15% of the agreements concluded by those jurisdictions are compliant.

48. The successive peer reviews therefore continue to demonstrate the importance of swift ratification of the BEPS MLI. All signatories to the BEPS MLI that have not yet ratified it are therefore encouraged to do so.

Table 2.1. Treaty networks and ratification of the BEPS MLI

Jurisdiction	Date of BEPS MLI Signing	Date of BEPS MLI Ratification	Agreements in force on 31 May 2023	Compliant agreements on 31 May 2023	% of network compliant	% of network with IF members compliant
Albania	28 May 2019	22 September 2020	43	27	63%	65%
Andorra	07 June 2017	29 September 2021	10	10	100%	100%
Armenia	07 June 2017	25 September 2023	52	3	6%	7%
Australia	07 June 2017	26 September 2018	45	29	64%	71%
Austria	07 June 2017	22 September 2017	90	40	44%	51%
Bahrain	27 November 2020	23 February 2022	45	23	51%	67%
Barbados	24 January 2018	21 December 2020	30	19	63%	67%
Belgium	07 June 2017	26 June 2019	95	55	58%	68%
Belize	11 January 2019	07 April 2022	5	2	40%	40%
Bosnia-Herzegovina	30 October 2019	16 September 2020	38	22	58%	64%
Bulgaria	07 June 2017	16 September 2022	71	41	58%	66%
Burkina Faso	07 June 2017	30 October 2020	4	2	50%	50%
Cameroon	11 July 2017	21 April 2022	6	4	67%	67%
Canada	07 June 2017	29 August 2019	94	50	53%	62%
Chile	07 June 2017	26 November 2020	36	28	78%	80%
China (People's Republic of)	07 June 2017	25 May 2022	105	60	57%	67%
Costa Rica	07 June 2017	22 September 2020	4	1	25%	25%
Côte d'Ivoire	24 January 2018	25 September 2023	11	0	0%	0%
Croatia	07 June 2017	18 February 2021	66	45	68%	75%
Curaçao	07 June 2017	29 March 2019	4	1	25%	33%
Czechia ¹	07 June 2017	13 May 2020	95	48	51%	56%
Denmark	07 June 2017	30 September 2019	71	41	57%	64%
Egypt	07 June 2017	30 September 2020	59	34	58%	69%
Estonia ²	29 June 2018	15 January 2021	62	19	31%	32%
Finland	07 June 2017	25 February 2019	74	48	64%	72%
France	07 June 2017	26 September 2018	120	59	49%	62%
Georgia	07 June 2017	29 March 2019	57	33	58%	62%
Germany ²	07 June 2017	18 December 2020	94	12	13%	14%
Greece	07 June 2017	30 March 2021	57	42	74%	77%
Guernsey	07 June 2017	12 February 2019	14	13	93%	92%

Jurisdiction	Date of BEPS MLI Signing	Date of BEPS MLI Ratification	Agreements in force on 31 May 2023	Compliant agreements on 31 May 2023	% of network compliant	% of network with IF members compliant
Hong Kong (China) ²	07 June 2017	25 May 2022	43	34	79%	83%
Hungary	07 June 2017	25 March 2021	83	55	66%	73%
Iceland	07 June 2017	26 September 2019	41	31	76%	75%
India	07 June 2017	25 June 2019	96	54	56%	67%
Indonesia ²	07 June 2017	28 April 2020	70	31	44%	55%
Ireland	07 June 2017	29 January 2019	74	55	74%	78%
Isle of Man	07 June 2017	25 October 2017	10	9	90%	90%
Israel	07 June 2017	13 September 2018	60	39	65%	71%
Japan	07 June 2017	26 September 2018	79	57	72%	80%
Jersey	07 June 2017	15 December 2017	15	10	67%	69%
Jordan	19 December 2019	29 September 2020	39	21	54%	71%
Kazakhstan	25 June 2018	24 June 2020	55	30	55%	63%
Korea	07 June 2017	13 May 2020	94	57	61%	69%
Latvia	07 June 2017	29 October 2019	64	44	69%	75%
Liechtenstein	07 June 2017	19 December 2019	21	21	100%	100%
Lithuania	07 June 2017	11 September 2018	58	41	71%	76%
Luxembourg	07 June 2017	09 April 2019	84	62	74%	77%
Malaysia	24 January 2018	18 February 2021	74	44	59%	73%
Malta	07 June 2017	18 December 2018	78	56	72%	76%
Mauritius	05 July 2017	18 October 2019	44	23	52%	64%
Mexico	07 June 2017	15 March 2023	60	3	5%	4%
Monaco	07 June 2017	10 January 2019	11	8	73%	80%
Netherlands	07 June 2017	29 March 2019	94	59	63%	70%
New Zealand	07 June 2017	27 June 2018	40	27	68%	73%
Norway	07 June 2017	17 July 2019	84	26	30%	33%
Oman	26 November 2019	07 July 2020	37	17	46%	59%
Pakistan	07 June 2017	18 December 2020	66	38	58%	72%
Panama	24 January 2018	05 November 2020	17	13	76%	76%
Papua New Guinea	23 January 2019	31 August 2023	10	0	0%	0%
Poland	07 June 2017	23 January 2018	82	52	63%	73%
Portugal	07 June 2017	28 February 2020	78	50	64%	73%
Qatar	04 December 2018	23 December 2019	80	44	55%	66%
Romania ²	07 June 2017	28 February 2022	88	1	1%	1%

Jurisdiction	Date of BEPS MLI Signing	Date of BEPS MLI Ratification	Agreements in force on 31 May 2023	Compliant agreements on 31 May 2023	% of network compliant	% of network with IF members compliant
Russian Federation ²	07 June 2017	18 June 2019	83	41	49%	60%
San Marino	07 June 2017	11 March 2020	25	18	72%	71%
Saudi Arabia	18 September 2018	23 January 2020	56	30	54%	63%
Senegal	07 June 2017	10 May 2022	20	12	60%	67%
Serbia	07 June 2017	05 June 2018	64	43	67%	72%
Seychelles	07 June 2017	14 February 2021	29	20	69%	73%
Singapore	07 June 2017	21 December 2018	93	62	67%	78%
Slovak Republic	07 June 2017	20 September 2018	70	41	59%	67%
Slovenia	07 June 2017	22 March 2018	60	42	70%	76%
South Africa	07 June 2017	30 September 2022	79	44	56%	66%
Spain ²	07 June 2017	28 September 2021	93	54	58%	67%
Sweden ²	07 June 2017	22 June 2018	83	9	11%	12%
Switzerland ²	07 June 2017	29 August 2019	108	24	22%	23%
Thailand	09 February 2022	31 March 2022	61	34	56%	66%
Tunisia	24 January 2018	24 July 2023	56	0	0%	0%
Ukraine	23 July 2018	08 August 2019	73	41	56%	66%
United Arab Emirates	27 June 2018	29 May 2019	110	54	49%	58%
United Kingdom	07 June 2017	29 June 2018	132	73	55%	68%
Uruguay	07 June 2017	06 February 2020	23	17	74%	77%
Viet Nam	09 February 2022	23 May 2023	76	0	0%	0%

1. Czechia has 95 agreements in force. These 95 agreements relate to 96 jurisdictions, because Czechia continues to apply the agreement with former Serbia and Montenegro to both Serbia and Montenegro. Czechia has listed this agreement to be covered under the BEPS MLI only in respect of Serbia. The agreement complies with the minimum standard only in relation to Serbia.

2. Estonia, Germany, Hong Kong (China), Indonesia, Romania, the Russian Federation, Spain, Sweden and Switzerland made a reservation under Article 35(7) of the BEPS MLI to delay the entry into effect of the BEPS MLI after completing their internal procedures.

Gaps in coverage of BEPS MLI

49. Although the coverage of the BEPS MLI is vast, certain gaps remain. These gaps exist because the BEPS MLI is a flexible instrument that allows each signatory to decide which of its agreements it wishes to cover under the BEPS MLI. Thus, at the time of signature, signatories are required to deposit lists of agreements they want to modify. The BEPS MLI only modifies bilateral agreements listed by both treaty partners.

One-way agreements

50. Where an agreement has been listed under the BEPS MLI by only one of its treaty partners although both treaty partners have signed the BEPS MLI, the minimum standard would not be implemented

in the agreement. Where both partners have signed the BEPS MLI, but only one has listed the agreement, listing the agreement would be interpreted as a request to implement the minimum standard. The parties would have an obligation to implement the minimum standard in the agreement and agree bilaterally on the method to be used.

51. As of 31 May 2023, about 160 bilateral agreements, concluded between pairs of signatories to the BEPS MLI that are members of the Inclusive Framework, would not be modified by the BEPS MLI because, at this stage, only one jurisdiction had listed the agreement under the BEPS MLI (“one-way agreements”).⁵

52. In some cases, the treaty partner that has not listed a “one-way agreement” to be covered under the BEPS MLI has formulated a plan to implement the minimum standard in that agreement by expanding its list of covered tax agreements under the BEPS MLI to include that agreement. In other cases, those “one-way agreements” have not been listed under the BEPS MLI because the treaty partner is pursuing bilateral renegotiations to implement the minimum standard. That treaty partner may also be intending to cover elements that go beyond the implementation of the minimum standard and other treaty-related BEPS measures. That said, 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.

Waiting agreements

53. In addition to the one-way agreement, there are over 280 bilateral agreements concluded between pairs of jurisdictions that are members of the Inclusive Framework where only one of them has signed the BEPS MLI (“waiting agreements”). For that reason, none of these agreements would, at this stage, be modified by the BEPS MLI. Nearly all these agreements would become covered under the BEPS MLI if the treaty partner that has not yet signed the BEPS MLI would do so and would list the agreement.

54. The OECD Secretariat has been liaising with some of the jurisdictions that have been working towards signature of the BEPS MLI as part of their plan to implement the minimum standard (see Chapter 3 below). Those included Antigua and Barbuda, Benin, Mauritania, Montenegro and others, which between them have over 70 waiting agreements that would become covered agreements under the BEPS MLI following their signatures.

Notes

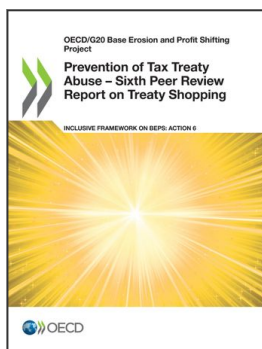
¹ One other jurisdiction that is not a member of the Inclusive Framework (Lesotho) also ratified the BEPS MLI in the past year.

² The BEPS MLI generally started to take effect as of 1 January 2023, with respect to agreements of jurisdictions that ratified it before the end of September 2022.

³ Armenia, Côte d'Ivoire, Mexico, Papua New Guinea, Tunisia and Viet Nam deposited their instruments of ratification of the BEPS MLI after October 2022.

⁴ Article 35 of the BEPS MLI provides for the rules on its entry into effect and divides modifications into two categories based on the type of taxation to which they apply. In general, under Article 35(1)(a), with respect to taxes withheld at source on amounts paid or credited to non-residents, the BEPS MLI enters into effect on or after the first day of the next calendar year that begins on or after the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. As for all the other taxes levied by a jurisdiction, Article 35(1)(b) provides that the BEPS MLI generally enters into effect with respect to taxable periods beginning on or after the expiration of a period of six calendar months from the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement.

⁵ The BEPS MLI can only modify bilateral agreements that have been listed by both treaty partners under the BEPS MLI.



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), “Key role of the BEPS MLI”, 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/10.1787/035f7f9c-en>

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>.