2 Key role of the MLI

Ratification of the MLI

41. The MLI started to show its effect and to strengthen the bilateral tax treaty network of jurisdictions that ratified it in the course of 2020. The number of agreements that became compliant with the MLI increased from 60 to over 350 between 2019 and 2020. In 2021, this number has surpassed 650. The peer review continues to reveal an important difference in the progress made on implementing the minimum standard by jurisdictions that have ratified the MLI compared with other jurisdictions.

42. Over the past year, 21 jurisdictions have ratified the MLI: Albania, Andorra, Barbados, Bosnia-Herzegovina, Burkina Faso, Chile, Costa Rica, Croatia, Egypt, Estonia, Germany, Greece, Hungary, Jordan, Kazakhstan, Malaysia, Oman, Pakistan, Panama, the Seychelles and Spain.

43. On average, nearly 50% of the treaty networks of jurisdictions for which the MLI started to take effect as of 1 January 2021,[1] are compliant with the minimum standard in 2021, as shown in the Table 2.1.

44. For the jurisdictions that ratified the MLI after October 2020,[2] the relevant provisions of the MLI had generally not yet started to take effect for their agreements on 31 May 2021. This is because provisions of the 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 MLI enters into force for each of the partners to an agreement. This period could roughly amount to a year from the latest ratification.[3]

45. While the jurisdictions that ratified the MLI made good progress in the implementation of the minimum standard, those that did not sign or ratify the MLI generally made little progress in implementing the minimum standard. Only around 8% of the agreements concluded by those jurisdictions are compliant.

46. The 2021 peer review thus continues to show the importance of swift ratification of the MLI. All signatories to the MLI that have not yet ratified it are therefore encouraged to do so.

47. The OECD Secretariat has liaised with the signatories of the MLI that, at the time of the drafting of this report, had not yet ratified it and notes that Bulgaria, Cameroon, Jamaica and North Macedonia are aiming to deposit their instrument of ratification of the MLI during the fourth quarter of 2021.[4]

Table 2.1. Treaty networks and ratification of the MLI

Jurisdiction	Date of MLI Ratification	Agreements in force	Compliant agreements on 31 May 2021	% of network compliant	% of network with IF members compliant
Albania	22 September 2020	42	18	43%	44%
Australia	26 September 2018	45	22	49%	54%
Austria	22 September 2017	90	26	29%	33%
Belgium	27 June 2019	95	39	41%	49%
Bosnia and Herzegovina	16 September 2020	38	16	42%	47%
Canada	29 August 2019	94	36	38%	45%
Costa Rica	22 September 2020	3	0	0%	0%
Curaçao	29 March 2019	4	1	25%	25%
Czech Republic1	13 May 2020	92	35	38%	43%
Denmark	30 September 2019	76	30	39%	49%
Egypt	30 September 2020	59	24	41%	49%
Finland	25 February 2019	73	40	54%	61%
France	26 September 2018	119	41	34%	44%
Georgia	29 March 2019	56	23	41%	45%
Guernsey	12 February 2019	14	10	71%	69%
Iceland	26 September 2019	45	29	64%	63%
India	25 June 2019	95	42	44%	53%
Indonesia	28 April 2020	70	21	30%	38%
Ireland	29 January 2019	73	40	55%	57%
Isle of Man	25 October 2017	10	6	60%	60%
Israel	13 September 2018	58	28	48%	55%
Japan	26 September 2018	75	44	59%	66%
Jersey	15 December 2017	15	8	53%	54%
Jordan	29 September 2020	37	15	41%	58%
Kazakhstan	24 June 2020	55	23	42%	49%
Korea	13 May 2020	94	41	44%	50%
Latvia	29 October 2019	62	34	55%	61%
Liechtenstein	19 December 2019	21	16	76%	76%
Lithuania	11 September 2018	56	33	59%	65%
Luxembourg	9 April 2019	83	46	55%	57%
Malta	18 December 2018	77	43	56%	59%
Mauritius	18 October 2019	44	12	27%	33%
Monaco	10 January 2019	10	6	60%	67%
Netherlands	29 March 2019	94	45	48%	54%
New Zealand	27 June 2018	40	21	53%	57%
Norway	17 July 2019	89	24	27%	30%
Oman	7 July 2020	35	9	26%	33%
Poland	23 January 2018	82	38	46%	54%
Portugal	28 February 2020	78	35	45%	50%
Qatar	23 December 2019	78	29	37%	45%
Russia2	18 June 2019	85	36	42%	52%
San Marino	11 March 2020	23	10	43%	43%
Saudi Arabia	23 January 2020	54	22	40%	52%
Serbia	5 June 2018	61	35	57%	63%
Singapore	21 December 2018	88	45	51%	60%
Slovak Republic	20 September 2018	69	32	46%	53%
Slovenia	22 March 2018	59	34	58%	63%
Sweden3	22 June 2018	85	7	8%	9%
Switzerland4	29 August 2019	107	14	13%	15%

Ukraine	8 August 2019	75	31	41%	48%
United Arab Emirates	29 May 2019	105	38	36%	46%
United Kingdom	29 June 2018	131	53	40%	50%
Uruguay	6 February 2020	22	14	64%	67%

1. The Czech Republic has 92 agreements in force. These 92 agreements relate to 93 jurisdictions, because the Czech Republic continues to apply the agreement with former Serbia and Montenegro to both Serbia and Montenegro. The Czech Republic has listed this agreement to be covered under the MLI only in respect of Serbia. The agreement complies with the minimum standard only in relation to Serbia.
2. The Russia Federation made a reservation under Article 35(7) of the MLI to delay the entry into effect of the MLI after completing its domestic procedures.
3. Sweden made a reservation under Article 35(7) of the MLI to delay the entry into effect of the MLI after completing its domestic procedures.
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Gaps in coverage of MLI

48. Throughout the 2021 peer review, gaps in the coverage of the MLI were identified. These gaps exist because the MLI is a flexible instrument that allows each signatory to decide which of its agreements it wishes to cover under the MLI. Thus, at the time of signature, signatories are required to deposit lists of agreements they want to modify. The MLI only modifies bilateral agreements listed by both treaty partners.

One-way agreements

49. Where an agreement has been listed under the MLI by only one of its treaty partners when both treaty partners have signed the MLI, the minimum standard would not be implemented in the agreement. The revised methodology has made it explicit that where both partners have signed the 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 how it would be done.

50. The 2021 peer review reveals that about 160 bilateral agreements, concluded between pairs of signatories to the MLI that are members of the Inclusive Framework, would not be modified by the MLI because, at this stage, only one jurisdiction had listed the agreement under the MLI ("one-way agreements").[5]

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

Waiting agreements

52. The 2021 peer review reveals that there are about 390 bilateral agreements concluded between pairs of jurisdictions that are members of the Inclusive Framework where only one of them has signed the MLI ("waiting agreements"). For that reason, none of these agreements would, at this stage, be modified by the MLI. Nearly all these agreements would become covered under the MLI if the treaty partner that has not yet signed the MLI would do so and would list the agreement.

In the course of this peer review, the OECD Secretariat liaised with some of the jurisdictions that were working towards signature of the MLI as part of their plan to implement the minimum standard (see Section 4 below). Those included Botswana, Mongolia, Montenegro, Thailand and Viet Nam, which between them have more than 140 waiting agreements that would become covered agreements under the MLI following their signatures. Thus, the signature of the MLI by jurisdictions with large treaty networks would materially improve the coverage of the MLI.

Notes

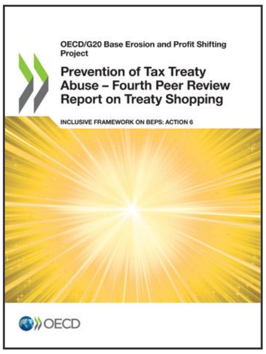
[1] The MLI generally started to take effect as of 1 January 2021, with respect to agreements of jurisdictions that ratified it before the end of September 2020.

[2] Andorra, Barbados, Burkina Faso, Chile, Croatia, Estonia, Germany, Greece, Hungary, Malaysia, Pakistan, Panama, the Seychelles and Spain deposited their instruments of ratification of the MLI after October 2020.

[3] Article 35 of the 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 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 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.

[4] China expects that the MLI ratification process will be accomplished before the end of 2021, and that the instrument of ratification of the MLI will be deposited in 2022. The deposit of China's instrument of ratification will also cover Hong Kong (China).

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



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