

2 The 2019 Peer Review

Implementation of the minimum standard

5. The data collected with respect to the implementation of the Action 6 minimum standard show that, by 30 June 2019, 91 Inclusive Framework members had begun to update their bilateral treaty network and were implementing the minimum standard. The MLI had, by that same date, already modified around 60 bilateral agreements.¹ The MLI's impact is expected to increase quickly as jurisdictions ratify it and additional jurisdictions with large tax treaty networks join the MLI.²

6. The 2019 peer review collected data on how the 129 jurisdictions that were members of the Inclusive Framework on 30 June 2019 are updating their tax treaties, as foreseen by the current Peer Review Document.³ Aggregate data on updates to bilateral treaties are presented below and a jurisdictional section for every member of the Inclusive Framework can be found in Chapter 5.

7. The 129 jurisdictions in the Inclusive Framework reported a total of 2 145 agreements between Inclusive Framework members themselves, and about 1 020 agreements between Inclusive Framework members and non-members.⁴

8. The agreements between Inclusive Framework members and non-members are not subject to the peer review and the aggregate results in this chapter focus on the 2 145 agreements entered into between Inclusive Framework members. The jurisdictional sections in Chapter 5 show cases where agreements outside the peer review comply with the minimum standard or are subject to a complying instrument.⁵

9. On 30 June 2019, 91 jurisdictions of the Inclusive Framework had some agreements that already complied with the minimum standard or were subject to a complying instrument and will therefore become compliant shortly.⁶ An additional seven jurisdictions had no comprehensive tax agreements in force subject to the peer review.⁷ Thirty-one jurisdictions had not signed any complying instruments to implement the minimum standard.

Compliant agreements

10. As of 30 June 2019, 86 bilateral agreements between members of the Inclusive Framework complied with the minimum standard. An additional 14 agreements not subject to this review (i.e. agreements between Inclusive Framework members and non-members) also complied with the minimum standard.

11. In each of the 86 agreements that already comply with the minimum standard, the minimum standard is implemented through the inclusion of the preamble statement and the principal purposes test (PPT). Of these 86 agreements, 17 agreements supplement the PPT with a limitation on benefits (LOB) provision.

Non-compliant agreements subject to a complying instrument

12. 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.

13. On 30 June 2019, about 1 330 of the 2 145 bilateral agreements between Inclusive Framework members 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 were thereby set to become compliant with the minimum standard.⁸ These agreements, to be modified by the MLI, would comply with the minimum standard once its provisions take effect, following ratification by both Contracting Jurisdictions.⁹

14. Around another 430 of these 2 145 bilateral agreements could be modified by the MLI in the future. This is because these agreements have been listed under the MLI by only one of the treaty partners and are waiting for a match.¹⁰ These include “waiting” agreements between Inclusive Framework members that have signed the MLI and those that have not yet signed it.¹¹

15. As things stand, the MLI will modify around 65% of all agreements between Inclusive Framework members. Some additional jurisdictions have expressed interest in signing the MLI.¹² If all waiting agreements become covered tax agreements, this figure could be as high as 85%.

16. A further 22 agreements are subject to a bilateral amending instrument that is not yet in force.¹³ For example, the Nordic Convention is currently subject to a complying instrument, which was signed in August 2018. The Convention will comply with the minimum standard once that instrument enters into effect.

17. The number of agreements subject to a bilateral amending instrument, when compared with those that are subject to the MLI, shows the efficiency of the MLI in implementing the minimum standard.

18. For the agreements listed under the MLI, all 85 members of the Inclusive Framework that are parties and signatories to the MLI are implementing the preamble statement and the PPT. Twelve 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.

19. In total, the PPT will be implemented in all agreements to be covered under the MLI. Around 60 of these agreements will also include a simplified LOB provision.

Notes

¹ The MLI was not in force at the time of the first peer review.

² As set out above, Bahrain, Jordan, Lebanon, North Macedonia, Thailand and Viet Nam, jurisdictions with large tax treaty networks, have expressed their intention to join the MLI in the future.

³ The BEPS Action 6 Report.

⁴ In 2018, the Inclusive Framework reported 1 940 agreements entered into between Inclusive Framework members. The additional 205 agreements reviewed in 2019 includes new agreements entered into between Inclusive Framework members between 30 June 2018 and 30 June 2019 and, importantly, the

relevant existing agreements of the 13 new Inclusive Framework members, which were not subject to the 2018 Peer Review.

⁵ 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.

⁶ Eighty-nine jurisdictions were signatories or parties to the MLI as of 30 June 2019, but four of them are not members of the Inclusive Framework. As of 30 June 2019, 85 Inclusive Framework members were signatories or parties to the MLI. Three additional members (Brazil, North Macedonia and Zambia), although not signatories or parties to the MLI, have concluded one or two amending protocols to implement the minimum standard.

⁷ Angola, the Bahamas, the Cayman Islands, the Cook Islands, Djibouti, Haiti and Turks and Caicos Islands have no agreements in force.

⁸ On 30 June 2019, most signatories’ MLI positions, including the list of notified tax agreements, were provisional and could be subject to future changes.

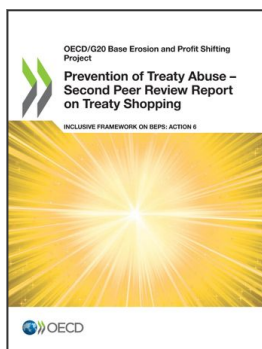
⁹ Article 35 of the MLI governs its entry into effect. The provisions of the MLI take effect for covered tax agreements on different dates.

¹⁰ Under Article 2 of the MLI, a Covered Tax Agreement means an agreement with respect to which each Party [to the agreement] has made a notification to the Depository of the MLI listing the agreement as one which it wishes to be covered by the MLI.

¹¹ In addition, around 175 agreements concluded amongst Inclusive Framework members that have signed the MLI were only listed under the MLI by one of the treaty partners.

¹² As set out above, Bahrain, Jordan, Lebanon, North Macedonia, Thailand and Viet Nam, jurisdictions with large tax treaty networks, have expressed their intention to join the MLI in the future.

¹³ Some agreements subject to a bilateral complying instrument were also listed under the MLI as the MLI allows jurisdictions to implement other (non-minimum standard) treaty-related BEPS measures.



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