

Germany

A. Progress in the implementation of the minimum standard

Germany has 95 tax agreements in force as reported in its response to the Peer Review questionnaire. Four of those agreements⁶⁹, comply with the minimum standard.

Germany signed the MLI in 2017 and deposited its instrument of ratification on 18 December 2020, listing 14 of its agreements in force at that time. The MLI entered into force for Germany on 1 April 2021. The agreements modified by the MLI come into compliance with the minimum standard once the provisions of the MLI take effect.

Germany reserved the right to delay the entry into effect of the provisions of the MLI until Germany has completed its internal procedures for this purpose with respect to each of its listed agreements.⁷⁰ Germany has not yet notified that it completed its internal procedures for the entry into effect of the MLI with respect to any of its agreements.

Germany has not listed its agreements under the MLI with Albania, Argentina, Armenia, Belgium, Belarus, Bulgaria, Bosnia-Herzegovina, Canada, China (People's Republic of), Costa Rica, Côte d'Ivoire, Denmark, Egypt, Estonia⁷¹, Georgia, Iceland, India, Indonesia, Ireland, Israel, Jamaica, Kazakhstan, Kenya, Korea, Latvia, Liberia, Liechtenstein⁷², Lithuania, Malaysia, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Namibia, New Zealand, the Netherlands, North Macedonia, Norway, Pakistan, Poland, Portugal, the Russian Federation, Serbia, Slovenia, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Ukraine, United Arab Emirates⁷³, the United Kingdom, Uruguay, Viet Nam and Zambia. These agreements will therefore not, at this stage, be modified under the MLI. Albania, Armenia, Bosnia-Herzegovina, China (People's Republic of), Côte d'Ivoire, Egypt, India, Jamaica, Kazakhstan, Liechtenstein⁷⁴, Lithuania, Malaysia, Mauritius, Mexico, Morocco, Namibia, the Netherlands, New Zealand, North Macedonia, Pakistan, Portugal, Serbia, Singapore, Tunisia, Ukraine, United Arab Emirates⁷⁵, and Uruguay have listed their agreement with Germany under the MLI.

Germany has signed a bilateral complying instrument with respect to its agreements with Cyprus*, Denmark, Estonia⁷⁶, Ireland, Liechtenstein⁷⁷, the Netherlands and the United Kingdom.⁷⁸

⁶⁹ As of 29 June 2021, a fifth agreement (the agreement with Estonia) also complies with the minimum standard. As of 29 October 2021, a sixth agreement (the agreement with Liechtenstein) also complies with the minimum standard.

⁷⁰ The reservation was made under Article 35(7)(a) of the MLI.

⁷¹ The complying instrument with respect to the agreement with Estonia entered into force on 29 June 2021. As of that date, the agreement with Estonia is compliant with the minimum standard.

⁷² The complying instrument with respect to the agreement with Liechtenstein entered into force on 29 October 2021. As of that date, the agreement with Liechtenstein is compliant with the minimum standard.

⁷³ The agreement with the United Arab Emirates expires on 31 December 2021.

⁷⁴ See note above on the agreement with Liechtenstein.

⁷⁵ See note above on the agreement with the United Arab Emirates.

⁷⁶ See note above on the agreement with Estonia.

⁷⁷ See note above on the agreement with Liechtenstein.

⁷⁸ Germany signed a bilateral complying instrument with respect to its agreements with Mauritius and Mexico on 29 October 2021 and 8 October 2021, respectively.

Germany indicated in its response to the Peer Review questionnaire that steps have been taken (other than under the MLI) to implement the minimum standard in its agreement with Argentina, Belgium, Bolivia*, Bulgaria, Canada, China (People's Republic of), Costa Rica, Ecuador*, Egypt, Iceland, India, Indonesia, Iran*, Israel, Kazakhstan, Kenya, Korea, Kosovo*, Kuwait*, Latvia, Liberia, Lithuania, Mauritius⁷⁹, Mexico⁸⁰, Mongolia, Morocco, Namibia, New Zealand, Norway, Pakistan, Poland, Portugal, the Russian Federation, Serbia, Slovenia, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Ukraine, Uruguay and Viet Nam.⁸¹

Germany indicated in its response to the Peer Review questionnaire that the agreements with Bosnia-Herzegovina, Montenegro and Zambia do not give rise to material treaty-shopping concerns for Germany, noting the application of German domestic anti-abuse provisions such as Section 42 of the German Fiscal Code (GAAR) or in Section 50d para. 3 of the German Income Tax Act (anti-conduit rule), which permits the proportionate denial of tax treaty benefits to companies with non-eligible shareholders. Germany further indicated that the agreements with Armenia, Belarus, Georgia, Malaysia, North Macedonia and the United Arab Emirates⁸² do not give rise to material treaty-shopping concerns for Germany, because they contain a general reservation for the application of domestic anti-abuse provisions such as the two sections mentioned above and the CFC-legislation.

Germany is implementing the minimum standard through the inclusion of the preamble statement and the PPT.⁸³

B. Conclusion

Albania, Armenia, Bosnia-Herzegovina, China (People's Republic of), Côte d'Ivoire, Egypt, India, Jamaica, Kazakhstan, Lithuania, Malaysia, Mauritius, Mexico, Morocco, Namibia, New Zealand, North Macedonia, Pakistan, Portugal, Serbia, Tunisia, Ukraine, United Arab Emirates⁸⁴ and Uruguay have listed their agreement with Germany under the MLI, which amount to requests to implement the minimum standard.

Germany gave effect to its plan to implement the minimum standard in its agreements with Albania, Côte d'Ivoire and Jamaica by pursuing bilateral negotiations to implement the minimum standard in those agreements.

Germany has developed a plan for the implementation of the minimum standard in its agreements with Armenia, Bosnia-Herzegovina and Malaysia. Germany indicated that bilateral negotiations would be pursued to implement the minimum standard with respect to those agreements.

⁷⁹ See the note above on the agreement with Mauritius.

⁸⁰ See the note above on the agreement with Mexico.

⁸¹ As described below, Germany has also started to give effect to its plan to implement the minimum standard in its agreements with Albania, Côte d'Ivoire and Jamaica.

⁸² See note above on the agreement with the United Arab Emirates.

⁸³ For its agreements listed under the MLI, Germany is implementing the preamble statement (Article 6 of the MLI) and the PPT (Article 7 of the MLI). Germany has made a reservation pursuant to Article 6(4) of the MLI not to apply Article 6(1) of the MLI with respect to agreements that already contain the relevant preamble language (covering one agreement). Germany has also made a reservation pursuant to 7(15)(b) of the MLI not to apply Article 7(1) of the MLI with respect to agreements which already contain a PPT (covering one agreement).

⁸⁴ See note above on the agreement with the United Arab Emirates.

Recommendations

It is recommended that Germany completes the steps to have the MLI take effect with respect to its agreements listed under the MLI as those agreements will only be modified by the MLI (and come into compliance with the minimum standard) once the provisions of the MLI take effect.

Summary of the jurisdiction response – Germany

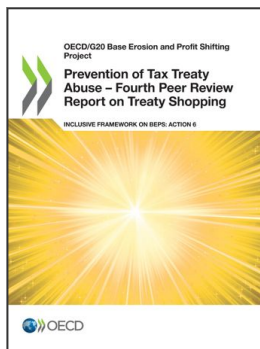
| | 1. Treaty partners | 2. Compliance with the standard | 3. Signature of a complying instrument | 4. Minimum standard provision used |
|----|------------------------------|---------------------------------|--|------------------------------------|
| 1 | Argentina | No | No | |
| 2 | Australia | Yes other | | PPT |
| 3 | Austria | No | Yes MLI | PPT |
| 4 | Belgium | No | No | |
| 5 | Bolivia* | No | No | |
| 6 | Bulgaria | No | No | |
| 7 | Canada | No | No | |
| 8 | China (People's Republic of) | No | No | |
| 9 | Costa Rica | No | No | |
| 10 | Croatia | No | Yes MLI | PPT |
| 11 | Cyprus* | No | Yes other | PPT |
| 12 | Czech Republic | No | Yes MLI | PPT |
| 13 | Denmark | No | Yes other | PPT |
| 14 | Ecuador* | No | No | |
| 15 | Egypt | No | No | |
| 16 | Estonia | No | Yes other | PPT |
| 17 | Finland | Yes other | | PPT |
| 18 | France | No | Yes MLI | PPT |
| 19 | Greece | No | Yes MLI | PPT |
| 20 | Hungary | No | Yes MLI | PPT |
| 21 | Iceland | No | No | |
| 22 | India | No | No | |
| 23 | Indonesia | No | No | |
| 24 | Iran* | No | No | |
| 25 | Ireland | No | Yes other | PPT |
| 26 | Israel | No | No | |
| 27 | Italy | No | Yes MLI | PPT |
| 28 | Japan | Yes other | | PPT+LOB |
| 29 | Kazakhstan | No | No | |
| 30 | Kenya | No | No | |
| 31 | Korea | No | No | |
| 32 | Kosovo* | No | No | |
| 33 | Kuwait* | No | No | |
| 34 | Latvia | No | No | |
| 35 | Liberia | No | No | |
| 36 | Liechtenstein | No | Yes other | PPT |
| 37 | Lithuania | No | No | |
| 38 | Luxembourg | No | Yes MLI | PPT |
| 39 | Malta | No | Yes MLI | PPT |

| | | | | |
|----|---------------------|-----------|-----------|-------|
| 40 | Mauritius | No | No | PPT |
| 41 | Mexico | No | No | PPT |
| 42 | Mongolia | No | No | |
| 43 | Morocco | No | No | |
| 44 | Namibia | No | No | |
| 45 | Netherlands | No | Yes other | PPT |
| 46 | New Zealand | No | No | |
| 47 | Norway | No | No | |
| 48 | Pakistan | No | No | |
| 49 | Poland | No | No | |
| 50 | Portugal | No | No | |
| 51 | Romania | No | Yes MLI | PPT |
| 52 | Russian Federation | No | No | |
| 53 | Serbia | No | No | |
| 54 | Singapore | Yes other | | PPT |
| 55 | Slovak Republic | No | Yes MLI | PPT |
| 56 | Slovenia | No | No | |
| 57 | South Africa | No | No | |
| 58 | Spain | No | Yes MLI | PPT |
| 59 | Sri Lanka | No | No | |
| 60 | Sweden | No | No | |
| 61 | Switzerland | No | No | PPT |
| 62 | Thailand | No | No | |
| 63 | Trinidad and Tobago | No | No | |
| 64 | Tunisia | No | No | |
| 65 | Turkey | No | Yes MLI | PPT |
| 66 | Ukraine | No | No | |
| 67 | United Kingdom | No | Yes other | PPT |
| 68 | United States | No | No | D-LOB |
| 69 | Uruguay | No | No | |
| 70 | Viet Nam | No | No | |

Other agreements

| | 1.Treaty partners | 2. Inclusive Framework member |
|----|--------------------|-------------------------------|
| 1 | Albania | Yes |
| 2 | Algeria* | No |
| 3 | Armenia | Yes |
| 4 | Azerbaijan* | No |
| 5 | Bangladesh* | No |
| 6 | Belarus | Yes |
| 7 | Bosnia-Herzegovina | Yes |
| 8 | Côte d'Ivoire | Yes |
| 9 | Georgia | Yes |
| 10 | Ghana* | No |
| 11 | Jamaica | Yes |
| 12 | Kyrgyzstan* | No |
| 13 | Malaysia | Yes |
| 14 | Moldova* | No |
| 15 | Montenegro | Yes |
| 16 | North Macedonia | Yes |
| 17 | Philippines* | No |

| | | |
|----|-----------------------|-----|
| 18 | Syrian Arab Republic* | No |
| 19 | Tajikistan* | No |
| 20 | Turkmenistan* | No |
| 21 | United Arab Emirates | Yes |
| 22 | Uzbekistan* | No |
| 23 | Venezuela* | No |
| 24 | Zambia | Yes |
| 25 | Zimbabwe* | No |



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