

2 Aggregate data on the implementation of the minimum standard

43. The data collected on the implementation of the Action 6 minimum standard showed that, on 1 July 2020, 98 jurisdictions of the Inclusive Framework had some agreements that already complied with the minimum standard or that were subject to a complying instrument and would therefore become compliant shortly.¹ An additional seven jurisdictions had no comprehensive tax agreements in force subject to the peer review.² Thirty-seven jurisdictions had not implemented anti-abuse measures in their treaty network. As mentioned above, those jurisdictions are encouraged to liaise with the OECD Secretariat to discuss their plan for the implementation of the minimum standard.

44. In total, the 137 jurisdictions of the Inclusive Framework reported 2,295 agreements in force between members of the Inclusive Framework, and about 905 agreements between members of the Inclusive Framework and non-members.³

45. 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 2,295 agreements entered into among members of the Inclusive Framework. The jurisdictional sections in Chapter 5 nevertheless indicate where agreements outside the peer review comply with the minimum standard or are subject to a complying instrument.⁴

Compliant agreements

46. On 1 July 2020, over 350 bilateral agreements between members of the Inclusive Framework complied with the minimum standard. An additional 20 agreements not subject to this review (i.e. agreements between members of the Inclusive Framework and non-members) also complied with the minimum standard.

47. In all compliant agreements, the preamble statement and the principal purpose test (PPT) were implemented to meet the minimum standard. Thirty-one of those agreements supplemented the PPT with a limitation on benefits (LOB) provision.

Agreements subject to a complying instrument that will be compliant

48. 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.

49. On 1 July 2020, over 1,300 bilateral agreements (of the 2 295 bilateral) between members of the Inclusive Framework 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.⁵ These agreements, to be modified by the MLI, will comply with the minimum standard once its provisions take effect, following ratification by both Contracting Jurisdictions.⁶

50. A further 17 agreements are subject to a bilateral amending instrument that is not yet in force.⁷ The number of agreements subject to a bilateral amending instrument, when compared with those that are subject to the MLI, shows the comparative effectiveness of the MLI in implementing the minimum standard.

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

Notes

¹ On 1 July 2020, 94 jurisdictions were signatories or parties to the MLI, but three of them (Cyprus, Fiji and Kuwait) are not members of the Inclusive Framework. As of 1 July 2020, 91 members of the Inclusive Framework were signatories or parties to the MLI. Seven additional members of the Inclusive Framework (Angola, Brazil, the Faroe Islands, Gibraltar, Greenland, Paraguay and Zambia), although not signatories or parties to the MLI, have concluded one or two amending protocols to implement the minimum standard.

² The Bahamas, the Cayman Islands, the Cook Islands, Djibouti, Haiti, Honduras and Turks and Caicos Islands have no agreements in force.

³ In 2018, the Inclusive Framework reported 1 940 agreements entered into between members of the Inclusive Framework. The additional 205 agreements reviewed in 2019 include new agreements entered into between members of the Inclusive Framework between 30 June 2018, and 30 June 2019, and the relevant existing agreements of the 13 new members of the Inclusive Framework, which agreements were not subject to the 2018 Peer Review.

⁴ 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.

⁵ On 1 July 2020, most signatories’ MLI positions, including the list of notified tax agreements, were provisional and could be subject to future changes.

⁶ Article 35 of the MLI governs its entry into effect. The provisions of the MLI take effect for covered tax agreements on different dates.

⁷ 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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