

PROGRESS REPORT 2019

International Taxation

MINISTRY
OF
FINANCE
OF
GEORGIA



REPORT ON PROGRESS 2019

This Progress Report tracks records of achievements in international taxation of the Ministry of Finance of Georgia for 2019 and covers following areas:

Tax Treaties

Base Erosion and Profit Shifting (BEPS)

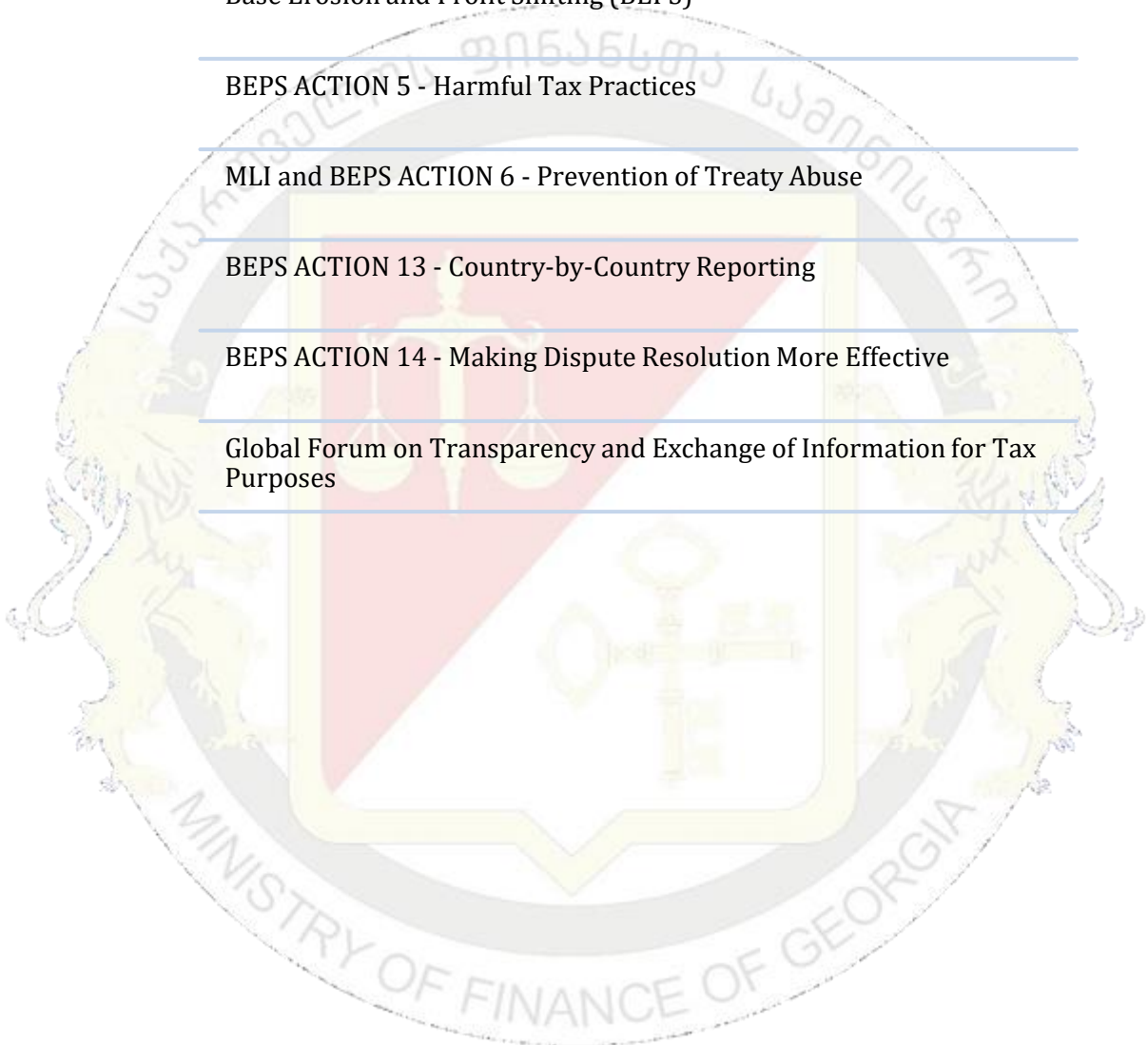
BEPS ACTION 5 - Harmful Tax Practices

MLI and BEPS ACTION 6 - Prevention of Treaty Abuse

BEPS ACTION 13 - Country-by-Country Reporting

BEPS ACTION 14 - Making Dispute Resolution More Effective

Global Forum on Transparency and Exchange of Information for Tax Purposes



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Tax Treaties

Currently Georgia has negotiated and concluded agreements on the „Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital “with **56** partner states. These agreements include treaties with all EU member states, as well as the OECD countries and Georgia’s major trade and economic partners.

In 2019 an agreement with the Kingdom of Saudi Arabia became effective and an agreement with the Hong Kong was initiated.



Base Erosion and Profit Shifting (BEPS)



In 2016, the OECD/G20 Inclusive Framework on BEPS (IF) was established and nowadays, the Inclusive Framework on BEPS brings together **over 135 countries** and jurisdictions to collaborate on the implementation of the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Package.

On June 14 2016, Georgia became an associate member of the inclusive framework for the implementation of the BEPS package (minimum standards). This is a unique opportunity for developing countries, and **Georgia in particular**, to work closely with OECD and G20 member states on an equal footing in respect of shaping and implementation of the BEPS outcomes in order to tackle tax avoidance efficiently.

All countries and jurisdictions joining the framework participate in review process, which allows members to review their own tax systems, identify, and remove elements creating BEPS risks.

The BEPS package consists of 15 Actions, where **four of them contain minimum standards**.

The BEPS minimum standards are as follows:



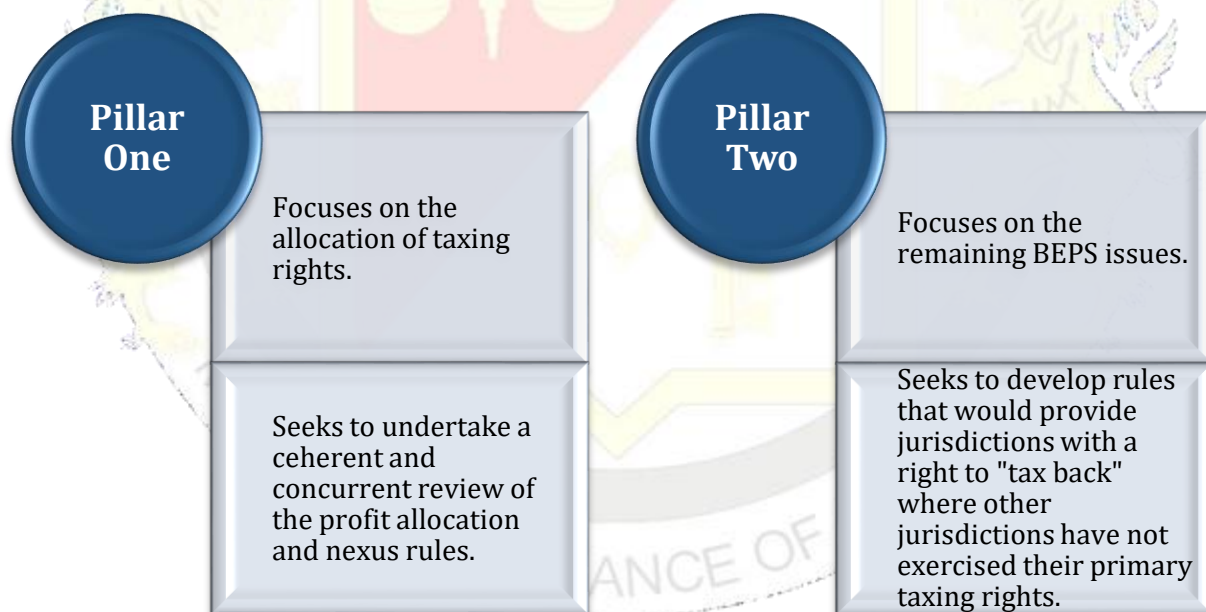
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As an Inclusive Framework member, **Georgia is actively engaged in the implementation process of the BEPS minimum standards.**

Since 2016, Georgia is also an elected member of the Steering Group – the governing body of the Inclusive Framework, which is composed of 22 member jurisdictions and chaired by Germany

In 2018 Georgia has been reelected for the second term in the Steering Group.

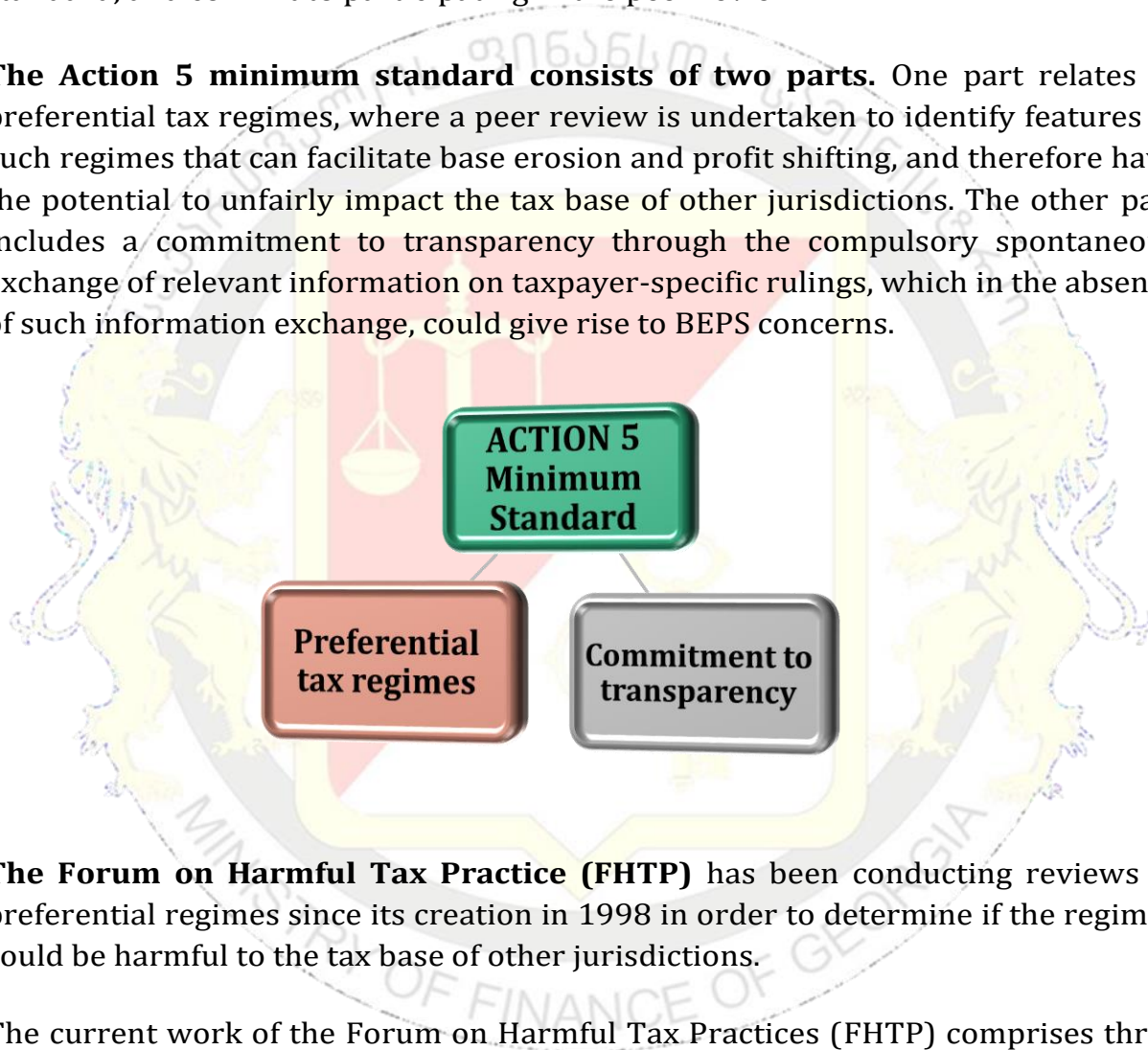
In 2019 as the member of the IF Steering Group Georgia was intensely involved in the work related to the tax challenges arising from the digitalization, which aims to provide consensus-based, long-term solutions to the tax challenges arising from the digitalization of the economy by 2020. Namely, in May 2019, the Inclusive Framework on BEPS Implementation adopted a Programme of Work to Develop a Consensus Solution, **which comprises 2 pillars:**



BEPS ACTION 5 - HARMFUL TAX PRACTICES

The Action 5 Report is one of the four BEPS minimum standards. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review.

The Action 5 minimum standard consists of two parts. One part relates to preferential tax regimes, where a peer review is undertaken to identify features of such regimes that can facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions. The other part includes a commitment to transparency through the compulsory spontaneous exchange of relevant information on taxpayer-specific rulings, which in the absence of such information exchange, could give rise to BEPS concerns.



The Forum on Harmful Tax Practice (FHTP) has been conducting reviews of preferential regimes since its creation in 1998 in order to determine if the regimes could be harmful to the tax base of other jurisdictions.

The current work of the Forum on Harmful Tax Practices (FHTP) comprises three key areas:

- The assessment of preferential tax regimes to identify features of such regimes that can facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions;

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- The peer review and monitoring of the Action 5 transparency framework through the compulsory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of such information exchange, could give rise to BEPS concerns; and
- The review of substantial activities requirements in no or only nominal tax jurisdictions to ensure a level playing field.

As a member of the inclusive framework, Georgia has been actively engaged in the work of the FHTP since September 2016.

In March 2017, Georgia became a member of the Bureau of the FHTP. Currently, the Bureau is co-chaired by France and Japan, and comprises representatives from the following other nine countries: Brazil, Germany, Ireland, Indonesia, Mexico, Singapore, Spain, Switzerland and the US.

In 2017 Georgia became a member of the Focus Group on the Revision of Criteria (FORC).

In 2017, for the first time, preferential tax regimes existing in Georgia has been reviewed by the FHTP against the compliance with the Action 5 minimum standards.

As a result of these reviews, it has been recognized that Georgia's Free Industrial Zone and Special Trade Company Regimes are out of scope of the minimum standards. As they are out of scope, no further action is required by Georgia.

Two other regimes, the International financial company and the Virtual zone person regimes were concluded as 'potentially harmful but not actually harmful' and Georgia received a recommendation: no further actions are required to be taken, though they are subject to an ongoing yearly monitoring process.

Every year FHTP conducts the reassessment of above mentioned preferential tax regimes and **the 2018-2019 these regimes have been granted the same assessments as within the 2017 assessments.**

Detailed information on Harmful Tax Practices – Peer Review Results may be found here:
<https://www.oecd.org>

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REGIME: International Financial Company	REGIME: Free Industrial Zone	REGIME: Special Trade Company	REGIME: Virtual Zone Person
STATUS: Potentially harmful	STATUS: Out of scope	STATUS: Out of scope	STATUS: Potentially harmful but not actually harmful
COMMENTS: Ring-fencing implicated, but no harmful economic effects in practice. Regime is subject to annual monitoring.	COMMENTS: No income from geographically mobile activities.	COMMENTS: No income from geographically mobile activities.	COMMENTS: Ring-fencing and substantial activities factor implicated, but no harmful economic effects in practice. Regime is subject to annual monitoring.

In order to fulfill the obligations emerged from the second part of the Action 5 of the BEPS Project Georgia implemented the transparency framework for spontaneous exchange of information on certain tax rulings.

Namely, In order to have the necessary legal framework in place for spontaneous exchange of information on rulings covered by the transparency framework and for purposes of fulfilling obligations arising from the joining of Georgia to the Inclusive Platform, the Ministry of Finance of Georgia issued “the Order on implementation of the obligatory measures under the Base Erosion and Profit Shifting (BEPS) Project”, as well as “the form for information exchange”, “Instructions for the form on Exchange of Information” and “Issues Specified by the Base Erosion and Profit Shifting Project Action Plan 5”.

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On 23 December 2019 OECD published 2018 Peer Review Reports on the Exchange of Information on Tax rulings where Georgia first time was reviewed under Action 5 minimum standard for compulsory spontaneous exchange of information on certain tax rulings and **Georgia received positive assessment (no recommendations).**

2018 Peer Review Reports on the Exchange of Information on Tax Rulings


This report reflects the outcome of the third annual peer review of the implementation of the Action 5 minimum standard and covers 112 jurisdictions. It assesses implementation for the 1 January 2018 – 31 December 2018 period.

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 <http://oe.cd/bepsaction5>



 <http://oe.cd/bepsaction5>

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MLI and BEPS ACTION 6 - PREVENTION OF TREATY ABUSE

In order to ensure swift implementation of action 6 outputs in the tax treaties, OECD elaborated the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI")**, which offers concrete solutions for governments to close loopholes in international tax treaties by transposing results from the BEPS Project into bilateral tax treaties worldwide. The MLI allows governments to implement agreed minimum standards to counter treaty abuse and improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

On 7 June 2017, together with 70 Ministers and other high-level representatives Georgia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI").

Following Georgia's international tax policy line, 34 out of 56 active double tax treaties will be modified under the MLI. With respect to the remaining jurisdictions, Georgia is working closely with them on a bilateral basis.

On December 29, 2018 Parliament of Georgia ratified the Multilateral Instrument, which entered into force for Georgia on July 1, 2019.

In order to facilitate the application of the MLI, **the Ministry of Finance is working closely with its partner countries for whom MLI entered into force to prepare synthesized texts.**

Synthesized text reproduces the text of each Covered Tax Agreement and the provisions of the MLI that modify that Covered Tax Agreement in the light of the interaction of the MLI positions Georgia has taken.

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In 2019 works on synthesized texts were successfully coordinated with the UK, Serbia, Slovakia and India.

Synthesized texts soon will be published on MOF web-page.

Currently Georgia is actively engaged in negotiations with Finland, Ireland, Israel, Lithuania, Norway, Singapore to finalize development of synthesized texts.

Georgia continues negotiation procedures with other partner states in order to reach an agreement on final versions of synthesized texts, which would reflect modifications made by the MLI.

To ensure effective and coordinated implementation of Action 6 minimum standard in 2018 the OECD launched a Peer Review of existing bilateral tax treaties

The 2019 Peer Review covers 129 jurisdictions. It started with a questionnaire sent to members of the Inclusive Framework in March 2019. The questionnaire was based on the 2018 Action 6 Peer Review questionnaire with a few modifications.

The 2019 **Peer Review** revealed, that Georgia has **made substantial progress towards implementing the minimum standard and are currently in the process of modifying their treaty network** by using the MLI, which has proved itself to be a quick and efficient way of allowing jurisdictions to meet the minimum standard.

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The excerpt of Georgia's 2019 review is attached below.

Georgia

A. Progress in the implementation of the minimum standard

Georgia has 56 tax agreements in force, as reported in its response to the Peer Review questionnaire.

Georgia signed the MLI in 2017, listing 34 tax agreements.

Georgia is implementing the minimum standard through the inclusion of the preamble statement and the PPT.⁵⁸

The agreements that will be modified by the MLI will come into compliance with the minimum standard once the provisions of the MLI take effect.

Georgia has indicated in the response to the Peer Review questionnaire that bilateral negotiations would be used for its agreement with Poland.

B. Implementation issues

No jurisdiction has raised any concerns about their agreements with Georgia.

Additionally, **Georgia** finalized bilateral talks with Poland to conclude bilateral amending protocol intending to bring the agreement with Poland in line with BEPS requirements.



BEPS ACTION 13 - Country - by-Country Reporting

Under BEPS Action 13 - Transfer Pricing Documentation and Country-by-Country Reporting, all large multinational enterprises (MNEs with consolidated group revenue of at least EUR 750 million) are required to report key information on their activities and income annually and for each tax jurisdiction in which they operate. The BEPS Action 13 report (Transfer Pricing Documentation and Country-by-Country Reporting) provides a template for that.

As one of the four BEPS minimum standards the Action 13 is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the inclusive Framework on BEPS commit to implementing the action 13 minimum standard and to participating in the peer review on an equal footing.

On June 30, 2016 in the framework of the first meeting of the Inclusive Framework on BEPS Georgia signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country (CbC MCAA) Reports.

The purpose of this CbC MCAA is to set forth rules and procedures as may be necessary for Competent Authorities of jurisdictions implementing BEPS Action 13 to automatically exchange CbC Reports prepared by the Reporting Entity of MNE Group.

But in order the CbC Reports to be exchanged between tax administrations all countries are required to have legal framework in place.

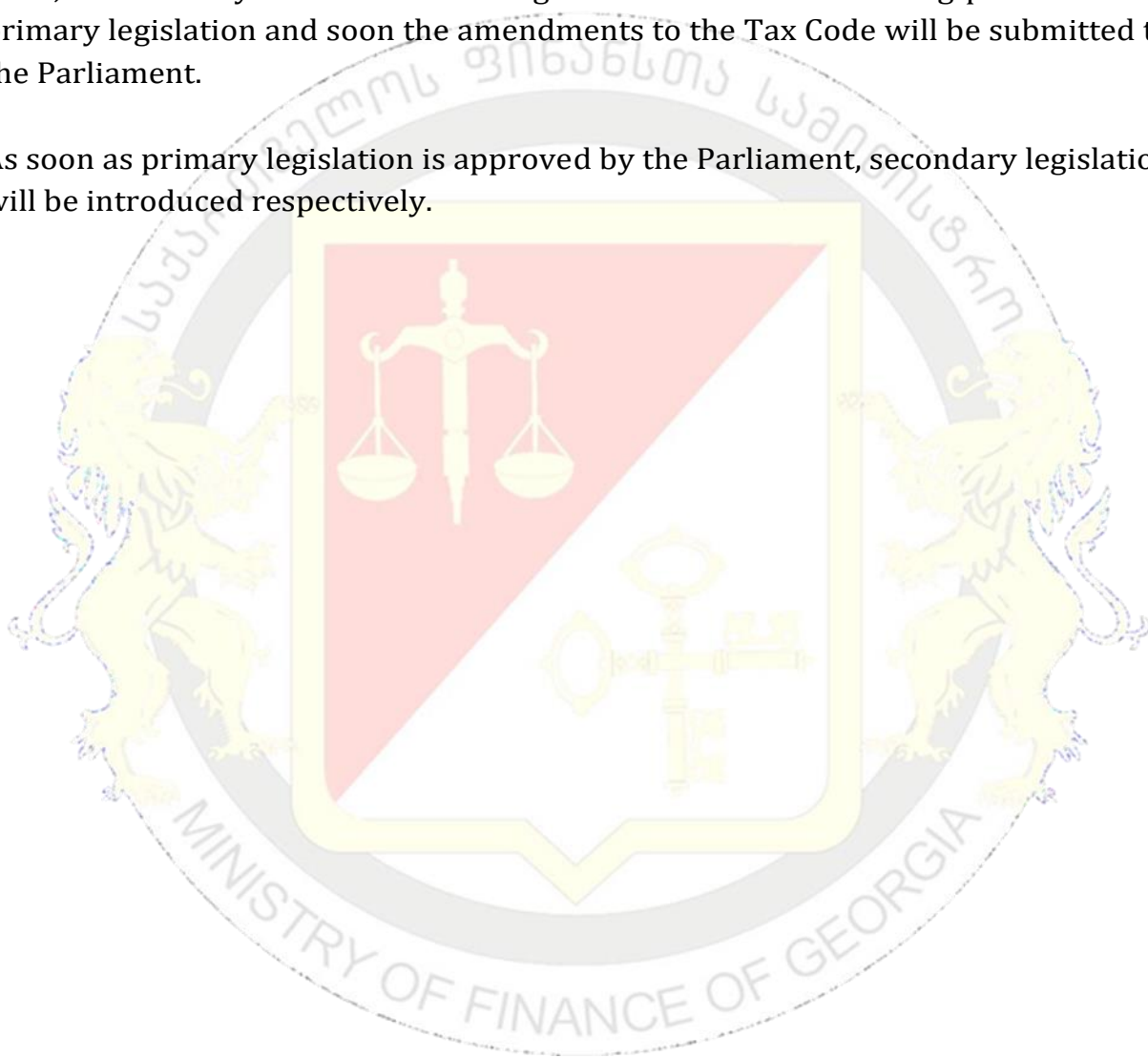


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During 2019 Ministry of Finance worked extensively together with the OECD to put in place legal framework for the implementation of the CbC reporting standard.

Thus, the Ministry of Finance of Georgia has finalized the drafting process of the primary legislation and soon the amendments to the Tax Code will be submitted to the Parliament.

As soon as primary legislation is approved by the Parliament, secondary legislation will be introduced respectively.



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BEPS ACTION 14 - Making Dispute Resolution More Effective

The minimum standard of Action 14 requires the Inclusive Framework member-countries to ensure the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure. The commitment by members to implement the Action 14 minimum standard includes a commitment to provide timely and complete reporting of MAP statistics pursuant to an agreed reporting framework.

The MAP peer review and monitoring process is conducted **by the Forum on Tax Administration (MAP Forum)** in accordance with the Terms of Reference and Assessment Methodology, with all members participating on an equal footing. The Assessment Methodology establishes detailed guidelines for a two-stage approach to the peer review and monitoring process.

Stage 1

- The review of a Member's implementation of the minimum standard based on its legal framework for MAP and the application of this framework in practice.

Stage 2

- The review of the measures taken by Member to address any shortcomings identified in its stage 1 Peer Review.

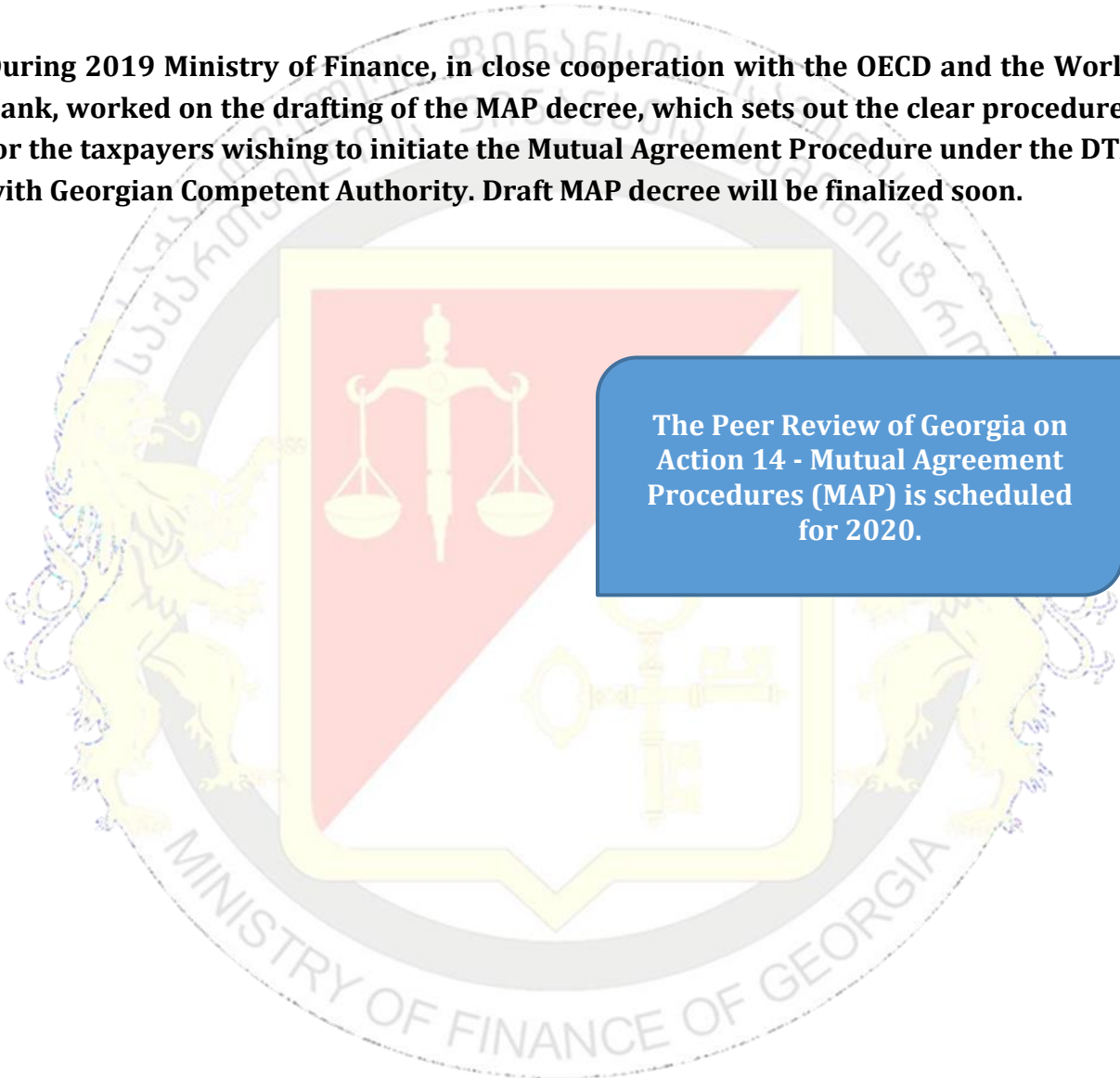
In May 2017, Georgia was elected as a member of the FTA MAP Forum Steering Group.

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Throughout the year 2019 Georgia was closely involved in activities of the FTA MAP Forum and participated in the reviews of other jurisdictions.

On March 6 2019 the Ministry of Finance provided the reporting of its MAP statistics pursuant to the agreed reporting framework.

During 2019 Ministry of Finance, in close cooperation with the OECD and the World Bank, worked on the drafting of the MAP decree, which sets out the clear procedures for the taxpayers wishing to initiate the Mutual Agreement Procedure under the DTA with Georgian Competent Authority. Draft MAP decree will be finalized soon.

The seal of the Ministry of Finance of Georgia is a large, faint watermark in the background. It features a central shield with a red and white diagonal design, a golden scale of justice, and a golden key. The shield is flanked by two golden lions. The entire emblem is encircled by a grey ring containing the text 'MINISTRY OF FINANCE OF GEORGIA' at the bottom and Georgian text at the top.

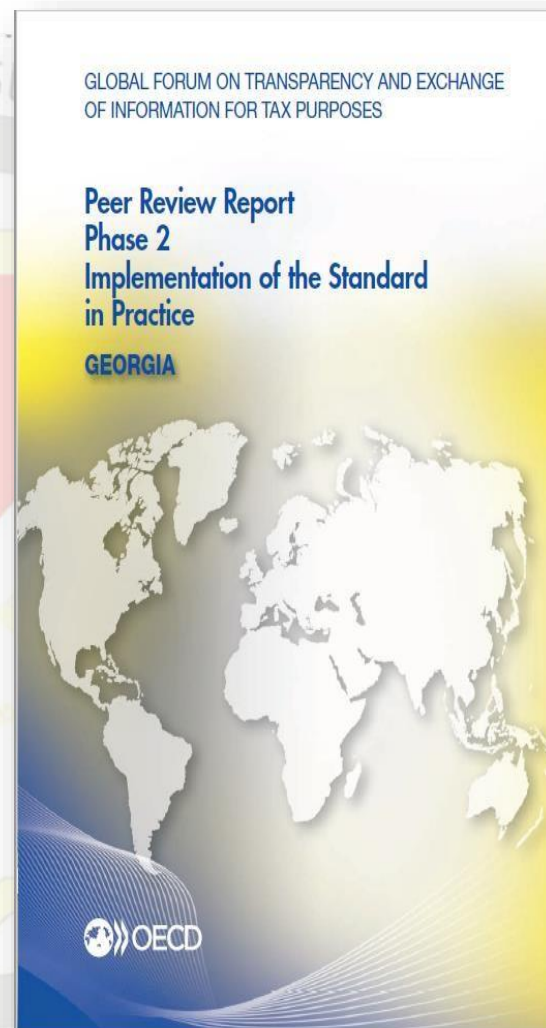
The Peer Review of Georgia on Action 14 - Mutual Agreement Procedures (MAP) is scheduled for 2020.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the world's leading multilateral body within which work in the area of transparency and exchange of information for tax purposes is carried out. The mandate of the Global Forum is to ensure a rapid and effective implementation of the standards on transparency and exchange of information for tax purposes. Its work focuses on two internationally recognised standards: exchange of information on request (EOIR) and automatic exchange of financial account information (AEOI). The Global Forum now has 158 members on equal footing.

One of the main instruments used by the Global Forum to ensure that its members effectively implement the internationally agreed standards is a peer review process. The process is robust and transparent and is designed to identify any areas of the legal or practical implementation of the standards that require improvement, and thus ensures the level playing field.



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Since mid-2016, a second round of reviews has commenced, which is a combined examination of both the legal and regulatory framework and the practical implementation of the standard. Peer reviews are undertaken on the basis of agreed terms of reference, using the methodology and assessment criteria.

The work on EOIR is undertaken by the Peer Review Group (PRG) comprising 30 members, among them Georgia.

On 11 April, 2011, Georgia became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Georgia's Phase 1 and Phase 2 reviews have been conducted in 2013-2016. As a result of the assessment it was established in 2016 that Georgia's legislation and practice in the field of tax transparency and exchange of information comply with the international standard and Georgia rates as overall largely compliant with the international standard.

In 2019 as a member of the Peer Review Group, Georgia was actively participating in and contributing to the monitoring and peer review process for EOIR.

Georgia's assessment under the new second round of reviews was initially scheduled for 2020. Due to the heavy workload at the Global Forum's Secretariat Georgia's review has been postponed to 2022.

During the year 2019 Georgia worked in close communication with the OECD experts and the relevant ministries/authorities on the questionnaire for the second round of Review of Georgia, which was intended to identify (what laws and practices may already be in place to ensure the availability of, access to, and exchange of all information foreseeably relevant for tax purposes) potential gaps to be addressed.

The 2022 review of Georgia will be conducted in accordance with the new 2016 methodology for the second round of reviews.

Key documents on the peer review process for the second round of reviews may be found here:

<https://www.oecd.org>