PE Watch: 2021 in review

Start

Building a better working world

Overview

The permanent establishment (PE) concept is a core element of the global international tax framework. With increasing cross-border business activities resulting from the globalization of the world economy, the PE risk is taking center stage among international tax issues. At the same time, the attribution of profits to PEs becomes more complex due to new business models, ecosystems and integration of operations within a business model. However, the attribution of profits to PEs also gains particular importance for the ramifications that it will have on the Global Anti-Base Erosion (GloBE) rules calculations when applicable.

To address the challenges arising from the digitalization of the economy, some jurisdictions have modified their domestic tax rules in an attempt to levy tax on business arrangements not requiring a physical nexus, including the triggering of a PE when certain services are provided from abroad for the benefit of a person resident in their jurisdiction. Such new concepts and approaches depart from the traditional views of PE.

Further, tax authorities are actively challenging the potential existence of PEs. This in turn, translates into businesses requiring more time and resources to manage their PE risks. According to the 2021 EY International Tax and Transfer Pricing Survey,* PE is one of the three top issues most likely to come under scrutiny over the next two years by the tax authorities around the world.

In addition, the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) 2.0 project is augmenting the current international tax landscape, which will likely increase complexity and compliance costs for cross-border business arrangements. Under Pillar One, a new special purpose nexus rule will be adopted to allocate residual profits of in-scope Multinational Enterprises (MNEs) to market jurisdictions where goods or services are used or consumed. Moreover, a treaty-based Subject to Tax Rule (STTR) may operate to deny treaty benefits (including exemption under the business profit article) for covered payments to the extent they are not subject to a nominal tax rate of above 9%.

Looking forward, a number of developments impacting PE assessments are expected. First, the implementation of the BEPS 2.0 rules in 2023 will impact PE scenarios. Taxpayers will need to face the interaction between the traditional concept of PE, the new nexus rules and global minimum taxation. Second, there is a shift towards a remote working culture and talent retention strategies. With more advanced technology as well as tools and information, tax authorities around the world may put under scrutiny potential PE cases for people working remotely in a jurisdiction different from where the employer is a tax resident. This is already the case where tax authorities and immigration authorities are exchanging information to have a better picture of who enters or leaves the country. Also, the increased proposals to attract individuals (e.g., digital nomads) by offering a preferential tax regime may also pose interesting questions related to PEs, and in particular on the home office PE concept. Finally, although COVID continues to be an issue, it is not blocking the movement of people as it was at the beginning of the pandemic, and there is not a uniform or standard approach, aside from the OECD guidance which addresses certain temporary situations under the pandemic but that are now becoming permanent.

This publication covers the most relevant PE topics during 2021 and each topic has two sections, except BEPS 2.0 which has one section. The first section provides background information while the second section addresses specific country developments during the relevant year with respect to each topic.

*https://www.ey.com/en_gl/tax/how-leaning-into-transfer-pricing-transformation-helps-manage-tax-risk

The topics are:

BEPS 2.0

COVID-19

Domestic law

BEPS multilateral instrument

Controversy

Topics

Cick on each topic to learn more

BEPS 2.0

The OECD's BEPS 2.0 project, which is designed to address the tax challenges arising from the globalization and digitalization of the economy will add another layer of complexity on cross-border transactions. Although the PE concept is not modified by this initiative, the interaction between the BEPS 2.0 rules and the PE rules may pose certain tax challenges.

As part of the negotiations of the BEPS 2.0 project, in October 2021, the Inclusive Framework on BEPS released a statement reflecting the agreement reached by the majority Inclusive Framework members on core design features of the two-pillar solution developed in the BEPS 2.0 project. This statement describes on a high-level basis agreed components with respect to both pillars of the project. Among other items, Pillar One includes the special purpose nexus rule applicable to a market jurisdiction when the in-scope MNE derives at least €1 million in revenue from that jurisdiction. With regards to Pillar Two, more details were provided on the new global rules introducing a minimum tax.

As agreed in the October Statement on its implementation plan, by the end of 2021, the OECD released the Model Rules on the Pillar Two which comprises the scope and mechanics of the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR), collectively referred to as the GloBE rules. A few days after this release and inspired from the OECD Model Rules, the European Commission also released proposed rules to ensure a global minimum level of taxation for MNE groups. Overall, the proposed rules are similar with a few differences (e.g., extension of the scope to purely domestic groups, election to apply a qualified domestic top-up tax).

Countries, like the United Kingdom, have already started reacting to the Model Rules by engaging stakeholders via public consultation on whether the Model Rules (as they are) can be transposed into domestic law or whether there should be some adjustments to the rules, but also on the features of the rules. Other countries (e.g., Switzerland) have announced their intention to implement the GloBE rules in the near future.

With respect to the content of the Model Rules, a PE is in-scope of the GloBE rules if the head office is part of an MNE group subject to the GloBE rules. The Model Rules include a series of definitions used throughout the rules, including a PE definition that covers four different scenarios. In addition, the Model Rules include specific rules applicable to the allocation of income or loss between a PE and its head office. For example, the net income or loss of a PE generally will not be included in the GloBE income or loss of the head office.

In the latest documents and proposals by the OECD and the European Commission, one of the PE-related elements missing is the Switch-Over Rule (SOR). In the Pillar Two Blueprint released in October 2020, the OECD described a SOR to apply the IIR to PE income that benefits from a tax exemption under the laws of the head office jurisdiction. Although the October Statement released in 2021 and the Model Rules do not include a reference to the SOR, the brochure accompanying the statement mentions that the commentary to the GloBE rules will addresses the need for a SOR in certain treaties and in circumstances that otherwise commit the contracting parties to the use of the exemption method. The SOR becomes relevant when the head office intends to apply the IIR to the income of an exempt PE and is prevented from doing so where the head office has entered into a bilateral tax treaty that obliges the head office's jurisdiction to exempt the income of the PE. The absence of such rule may raise questions on whether the IIR is still applicable in those cases where the head office jurisdiction and the jurisdiction where the PE is located have a tax treaty that prevents the head office jurisdiction from applying the IIR.

One of the open questions that remains unanswered is the interaction of the BEPS 2.0 project with the concept of Significant Economic Presence (SEP) that is already applied by a number of jurisdictions around the world. In particular for Pillar One, it is still unknown whether the tax liability under the SEP rules can be considered a similar measure for purposes of the unilateral measures that are to be withdrawn. As for Pillar Two, it is also uncertain whether taxes paid under the SEP rules should also be considered as part of the Covered Taxes or whether the activities giving rise to a SEP can also give rise to a PE under the GloBE rules. Another open question is the impact of the definition of PE for GloBE purposes. Under this new PE definition, the OECD expands the traditional PE definition and the question is whether this is the start of an updated PE definition and also whether countries would start expanding their PE definition to cover cases other than GloBE.

As part of the implications to be considered, the BEPS 2.0 project will impose certain challenges not only for taxpayers but also for tax authorities given that the proposed timeline for implementation (end of 2022) provides just a few months to pass a series of legislative changes and more importantly understand them. This concern was also raised by a few European Union (EU) Member States (e.g., Cyprus, Estonia, Hungary, Luxembourg, Romania, Slovakia and Spain) during the 18 January 2022 Economic and Financial Affairs Council (ECOFIN) meeting. Another concern raised during the meeting revolves around where Pillar One and Pillar Two should be implemented simultaneously (e.g., Estonia, Hungary and Poland).

Finally, businesses should ensure the clear delineation of the internal dealings between the head office and the PE. More importantly, the PE's financial accounts will play an important role not only for the taxation at the level of the PE but also at the level of the other entities of the group in which the IIR or UTPR may be applicable.

COVID-19

The COVID-19 pandemic also resulted in unprecedented operational changes which impacted PE positions. Governments have imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals still faced scenarios in which it was not possible to perform their duties in their countries of employment. Moreover, many companies had to interrupt or adjust their activities.

Considering the ongoing tax issues due to the COVID-19 pandemic, at the beginning of 2021, the OECD Secretariat **updated** the April 2020 guidance including the illustration of how some jurisdictions have addressed the impact of COVID-19 pandemic on certain tax situations, and examined whether the analysis and the conclusions outlined in the earlier guidance continue to apply where the circumstances persist for a significant period. Overall, the conclusions remain unchanged. However, the guidance relies on the temporary nature of the pandemic which has prolonged to the point that is questionable if the guidance remains applicable to the current environment.

As for country practices in 2021, while some jurisdictions have issued (e.g., Finland, Hong Kong) or updated (e.g., Canada, Cyprus, Greece, Ireland) their guidance on COVID-19 and PE issues, other jurisdictions have decided not to extend the period of application for their COVID-19 and PE guidance (e.g., Australia, Malaysia, Singapore) in view of the reopening of international borders and travel restrictions being lifted. Similarly, a few jurisdictions (e.g., Austria, Germany, Switzerland) decided to update their mutual agreements on frontier workers to include cases where working from home would generally not create a PE for the nonresident employer provided certain requirements are met.

Finally, "working from anywhere" has accelerated from concept to practice. In previous years, remote working was a distant concept for many companies and today we seem to be moving toward this paradigm. Hybrid or flexible work arrangements continue to increase and, in some cases, businesses are adopting a "work from anywhere" policy to attract talent, reduce costs and increase productivity. Such changes in the way that businesses will operate post-pandemic are adding to the complexity of managing global PE positions.

OECD and country developments

- **OECD:** In January 2021, the OECD Secretariat published a revised version of the guidance on tax treaties and the impact of COVID-19. This updated version of the guidance considers some additional fact patterns not addressed in detail in the April 2020 guidance, examines whether the analysis and the conclusions outlined in the April 2020 guidance continue to apply where the circumstances persist for a significant period, and contains references to country practice and guidance during the COVID-19 pandemic. **More details here. Link to the official guidance here.**

PE and COVID-19 guidance

Cick on each flag to learn more

Australia | Austria | Canada | Cyprus | Finland

Greece | Hong Kong | Ireland | Malaysia | Singapore

Mutual agreements

Germany | Austria

Germany | Switzerland

Domestic treatment of PEs

In 2021, a number of jurisdictions updated their PE definitions to align with international standards. For example, Kenya repealed its PE definition and introduced a new one. Regarding the taxation of PEs, Ireland introduced measures that provide for the application of the Authorized OECD Approach (AOA). Likewise, Austria and Portugal updated their TP guidelines, including the attribution of profits to PEs.

Another trend during the year was the treatment of losses incurred by foreign PEs in the EU. Some Member States (e.g., Belgium, Greece) updated their administrative guidance to allow the deduction of losses incurred by a foreign PE provided that the relevant losses are impossible to deduct in the jurisdiction where the PE was located.

Ultimately, some jurisdictions have been implementing rules to tax those business with digital activities, in particular for those companies without a physical presence in a given jurisdiction but with significant virtual presence. For example, Russia requires foreign entities with an online presence in Russia with more than 500,000 daily users to open a local office or branch in Russia. Likewise, Hong Kong requires a person carrying on business through the internet to apply for a business registration in Hong Kong.

Country developments

Cick on each flag to learn more

Austria | Belgium | Greece | Hong Kong | Ireland

Kenya | Mexico | Portugal | Russia

BEPS multilateral instrument

The number of tax treaties covered by the BEPS Multilateral Instrument (MLI) continues to increase. As of the end of 2021, the MLI has been signed by 96 jurisdictions and has entered into force for 65 jurisdictions. In relation to the PE positions made by the countries signing the MLI, 32 jurisdictions chose to apply all of the PE articles of the MLI, 30 jurisdictions chose some of the PE articles of the MLI and 34 jurisdictions made a reservation on all the PE articles of the MLI. A closer look at the PE positions shows that only 50% of jurisdictions chose to apply Article 12 (agency PE), 62.5% of jurisdictions chose to apply Article 13 (specific activity exemptions) and only 37.5% of jurisdictions chose to apply Article 14 (splitting-up of contracts).

During 2021, the Conference of the Parties issued four different opinions dealing with different interpretation or implementation issues of the MLI. Under the MLI, the Parties to the MLI may convene a Conference of the Parties to make any decisions or exercise any functions as may be required or appropriate under the provisions of the MLI. Any question arising as to the interpretation or implementation of the MLI may be addressed by a Conference of the Parties. For more details, see EY Global Tax Alerts:

- OECD publishes Arbitration Profiles of 30 countries under the MLI and a clarification regarding entry into effect, dated 1 April 2021.
- OECD: Conference of the Parties of the MLI approve opinion for MLI interpretation and implementation, dated 26 May 2021.
- OECD: Conference of the Parties of the MLI issues two opinions with respect to MAP implementation and the entry into effect of arbitration rules, dated 7 October 2021.

Furthermore, in 2021, the Arbitration Profiles of 30 jurisdictions were published providing additional information on the application of Part VI (mandatory binding arbitration) of the MLI for each of those jurisdictions.*

For 2022, it is anticipated that more jurisdictions will sign the MLI and also will be depositing their instrument of ratification of the MLI with the OECD. This will significantly increase the number of Covered Tax Agreements (CTAs) that the MLI may apply to. Further, one should consider that the OECD is planning to release a Multilateral Convention for Amount A under Pillar One and the STTR under Pillar Two during 2022 with the view of being in effect in 2023. As part of the work on the implementation framework on Pillar Two, Inclusive Framework members are considering the merits and possible content of a Multilateral Convention to ensure co-ordination and consistent implementation of the GloBE rules. The various Multilateral Conventions could certainly add more complexity to the tax treaty practice since all these instruments will apply alongside each other.

Click on map for more details on the MLI

* For more details, See EY Global Tax Alert, OECD publishes Arbitration Profiles of 30 countries under the MLI and a clarification regarding entry into effect, dated 1 April 2021.

BEPS multilateral instrument

Deposit
Entry into force
General overview PE positions of the MLI
PE positions - Article 12 (Agency PE)
PE positions - Article 13 (specific activity exemptions)
PE positions - Article 14 (contract splitting rule)

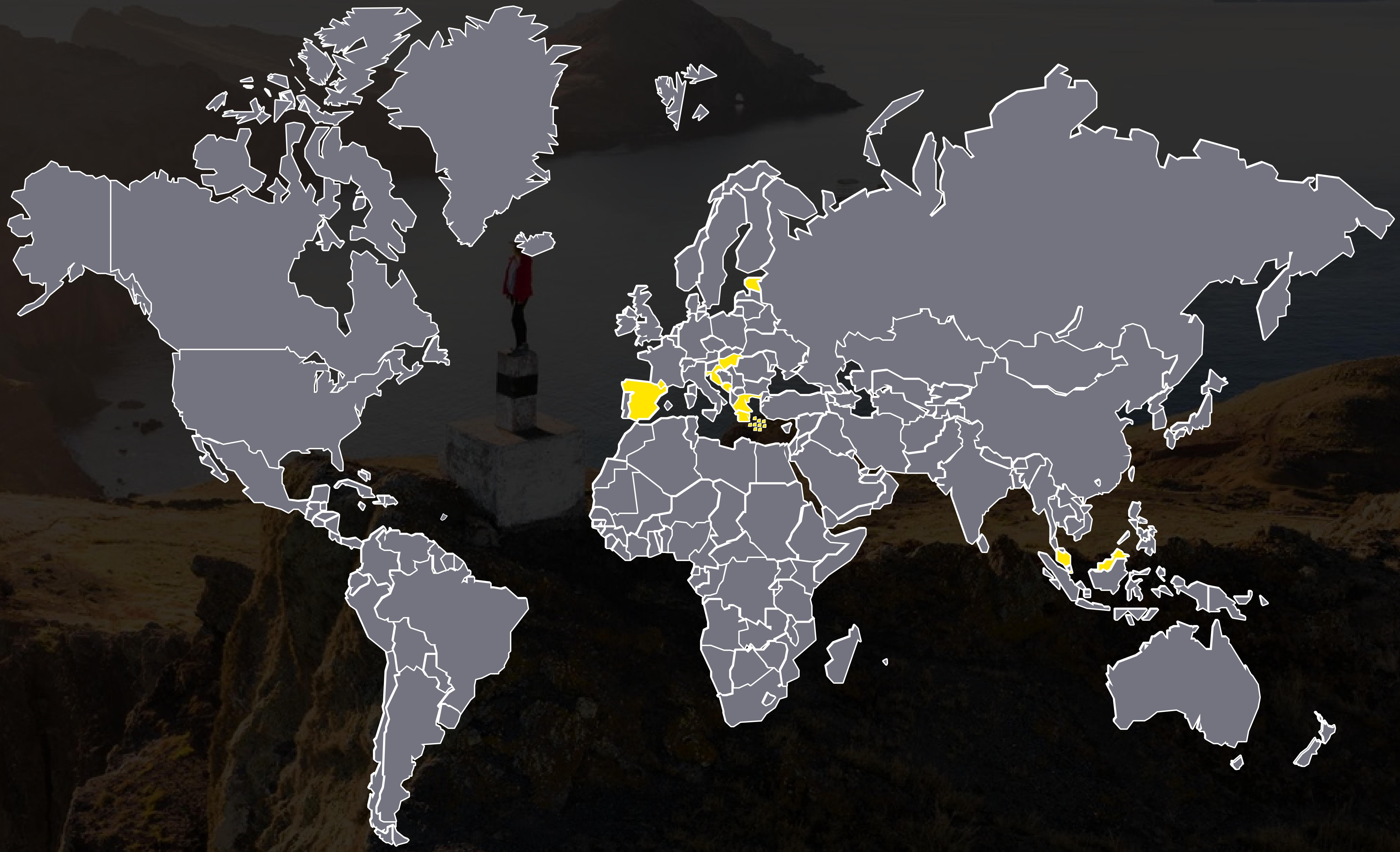
Cick on each box to read more

BEPS multilateral instrument

Deposit

Namibia signed the MLI on 30 September 2021. Also, the following jurisdictions deposited the instrument of ratification of the MLI with the OECD Secretary-General, the Depositary of the MLI during 2021:

Country	Date of deposit
Andorra	29 September 2021
Croatia	18 February 2021
Estonia	15 January 2021
Greece	30 March 2021
Hungary	25 March 2021
Malaysia	18 February 2021
Seychelles	14 December 2021
Spain	29 September 2021

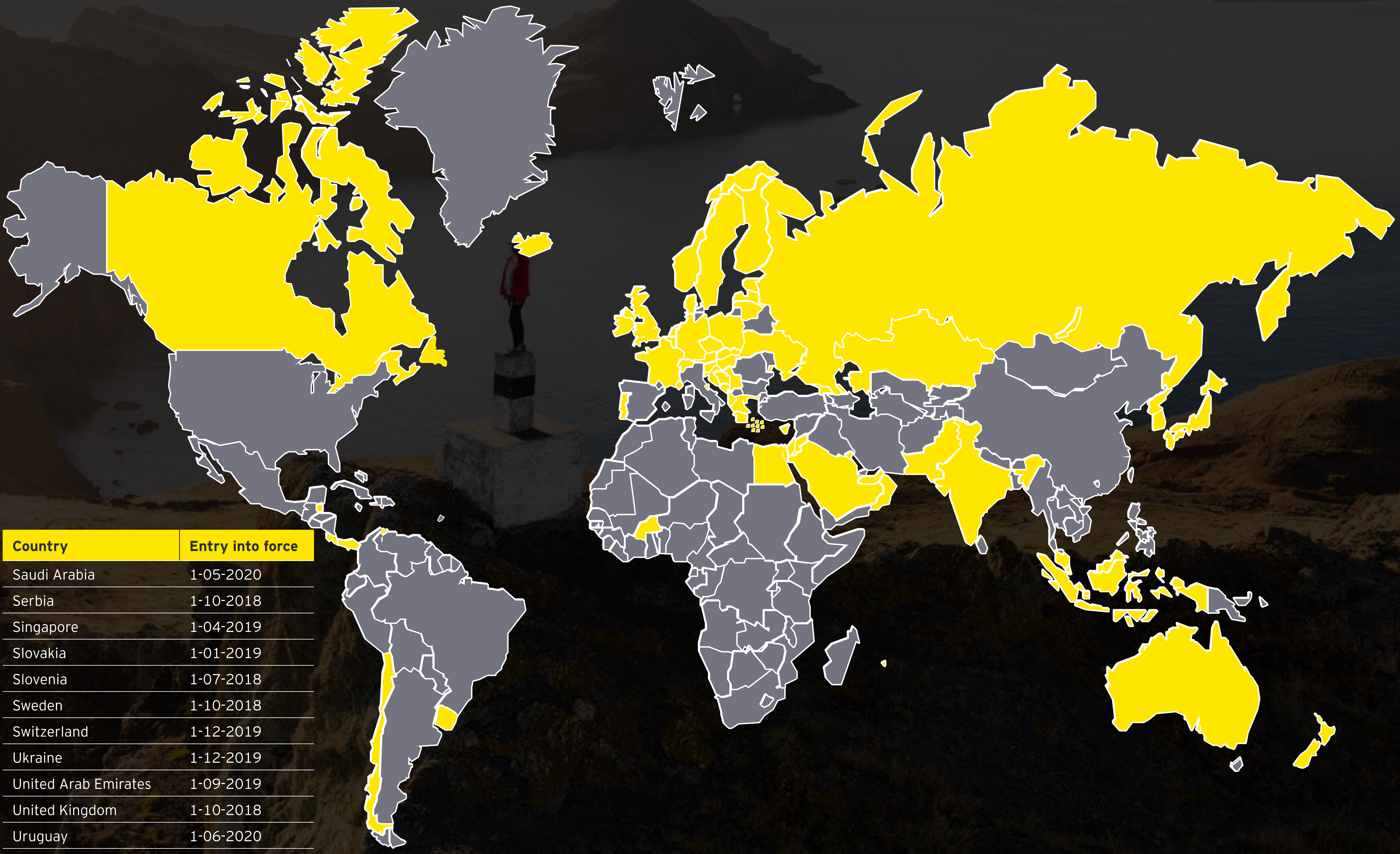


BEPS multilateral instrument

Entry into force

As of 31 December 2021, the MLI entered has entered into force for 65 jurisdictions

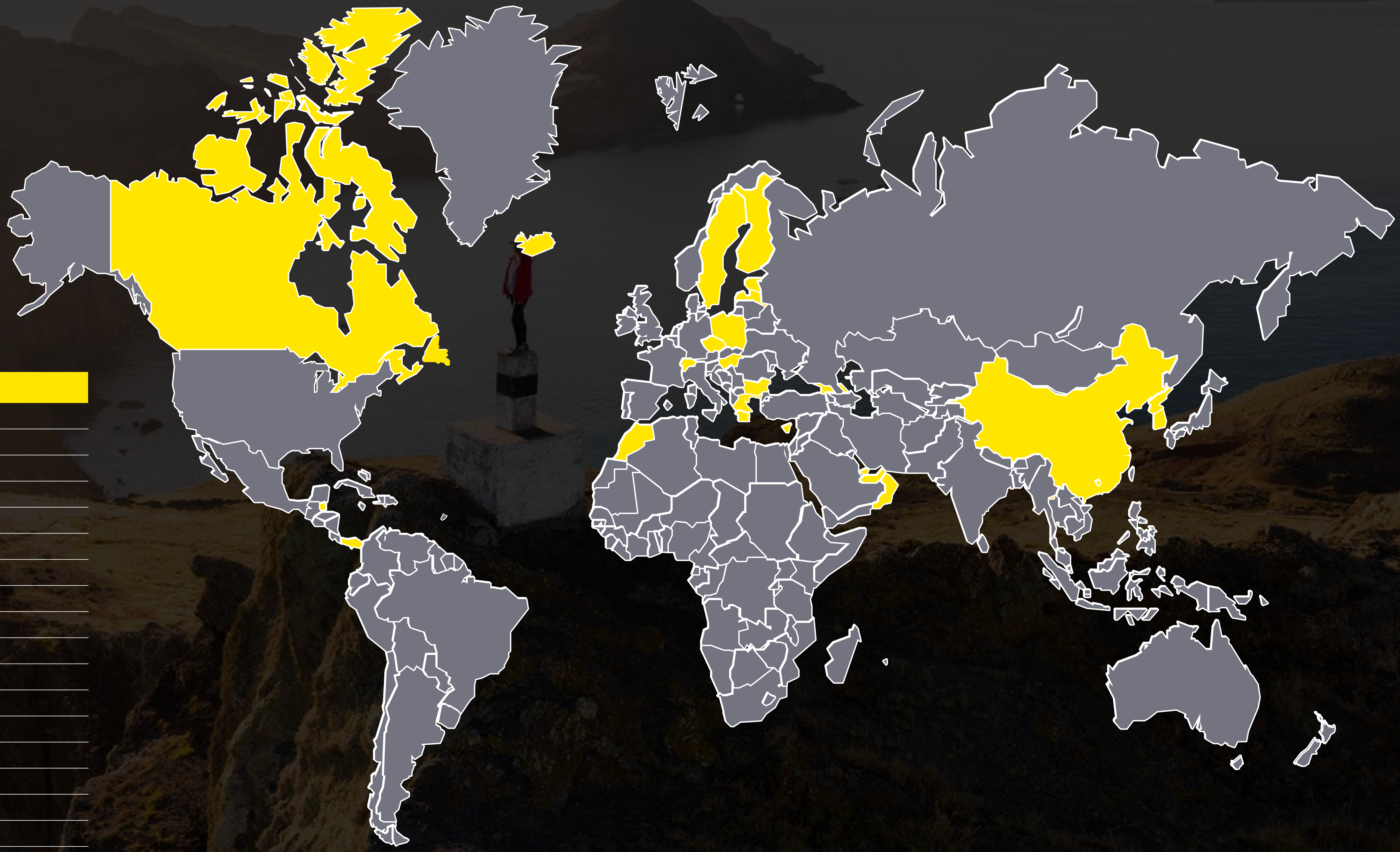
Country	Entry into force
Albania	1-01-2021
Australia	1-01-2019
Austria	1-07-2018
Barbados	1-04-2021
Belgium	1-10-2019
Bosnia and Herzegovina	1-01-2021
Burkina Faso	1-01-2021
Canada	1-12-2019
Chile	1-03-2021
Costa Rica	1-01-2021
Croatia	1-06-2021
Curaçao	1-07-2019
Cyprus	1-05-2020
Czech Republic	1-09-2020
Denmark	1-01-2020
Egypt	1-01-2021
Estonia	1-05-2021
Finland	1-06-2019
France	1-01-2019
Georgia	1-07-2019
Germany	1-04-2021
Greece	1-07-2021
Guernsey	1-06-2019
Hungary	1-07-2021
Iceland	1-01-2020
India	1-10-2019
Indonesia	1-08-2020
Ireland	1-05-2019
Isle of Man	1-07-2018
Israel	1-01-2019
Japan	1-01-2019
Jersey	1-07-2018
Jordan	1-01-2021
Kazakhstan	1-10-2020
Korea	1-09-2020
Latvia	1-02-2020
Liechtenstein	1-04-2020
Lithuania	1-01-2019
Luxembourg	1-08-2019
Malaysia	1-06-2021
Malta	1-04-2019
Mauritius	1-02-2020
Monaco	1-05-2019
Netherlands	1-07-2019
New Zealand	1-10-2018
Norway	1-11-2019
Oman	1-11-2020
Pakistan	1-04-2021
Panama	1-03-2021
Poland	1-07-2018
Portugal	1-06-2020
Qatar	1-04-2020
Russia	1-10-2019
San Marino	1-07-2020
Saudi Arabia	1-05-2020
Serbia	1-10-2018
Singapore	1-04-2019
Slovakia	1-01-2019
Slovenia	1-07-2018
Sweden	1-10-2018
Switzerland	1-12-2019
Ukraine	1-12-2019
United Arab Emirates	1-09-2019
United Kingdom	1-10-2018
Uruguay	1-06-2020



BEPS multilateral instrument

General overview PE positions of the MLI

Highlighted jurisdictions	Highlighted jurisdictions
Andorra	Isle of Man
Bahrain	Jersey
Barbados	Korea
Belize	Latvia
Bulgaria	Liechtenstein
Canada	Malta
China	Mauritius
Cyprus	Monaco
Czech Republic	Morocco
Estonia	Oman
Finland	Panama
Georgia	Poland
Greece	Qatar
Guernsey	Seychelles
Hong Kong	Sweden
Hungary	Switzerland
Iceland	United Arab Emirates



Does not want any of the PE article

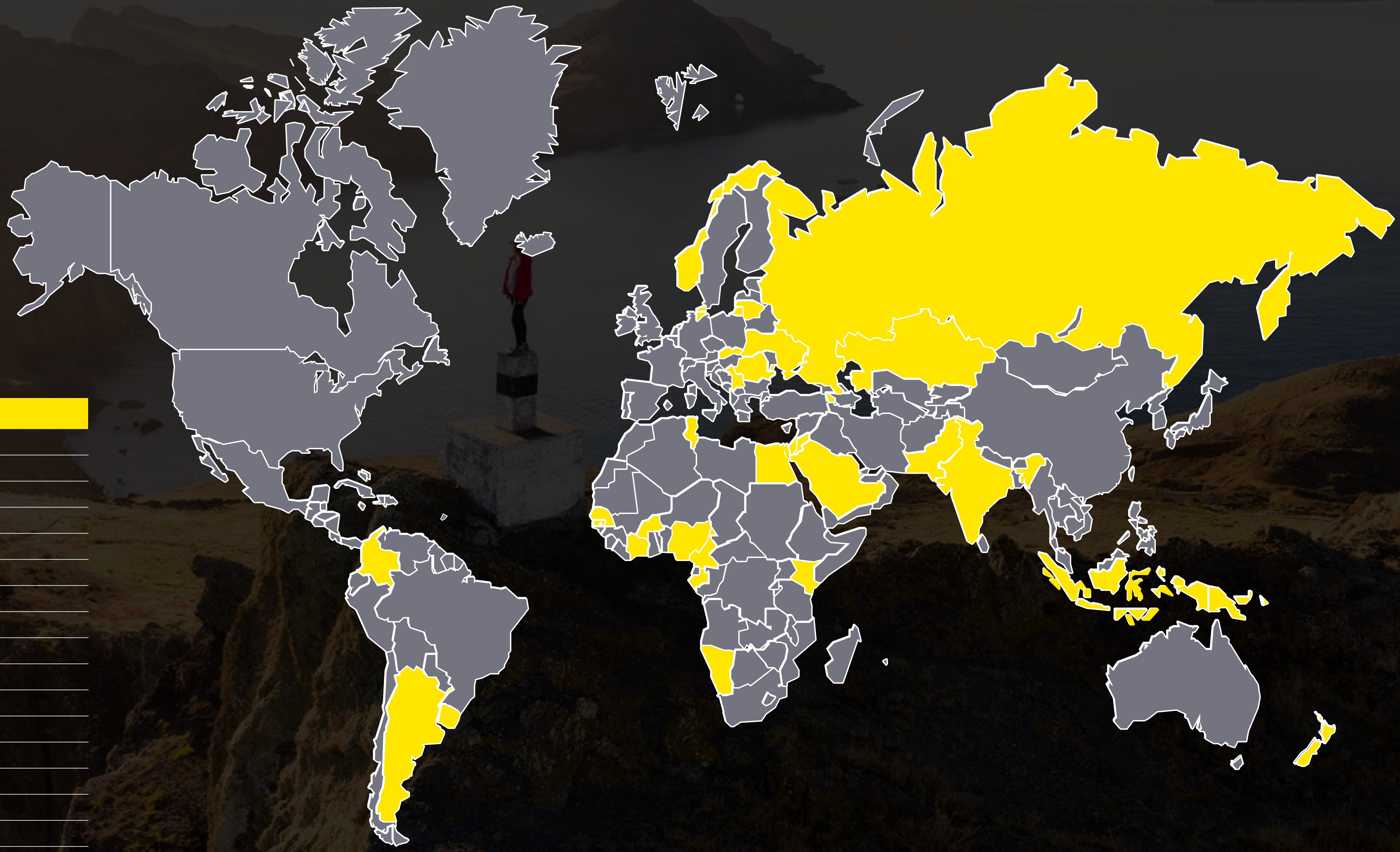
Wants all PE articles

Wants some of the PE articles

BEPS multilateral instrument

General overview PE positions of the MLI

Highlighted jurisdictions	Highlighted jurisdictions
Argentina	Lithuania
Armenia	Namibia
Burkina Faso	New Zealand
Cameroon	Nigeria
Colombia	Norway
Cote d'Ivoire	Pakistan
Denmark	Papua New Guinea
Egypt	Romania
Fiji	Russia
Gabon	Saudi Arabia
India	Senegal
Indonesia	Serbia
Israel	Slovakia
Jordan	Tunisia
Kazakhstan	Ukraine
Kenya	Uruguay



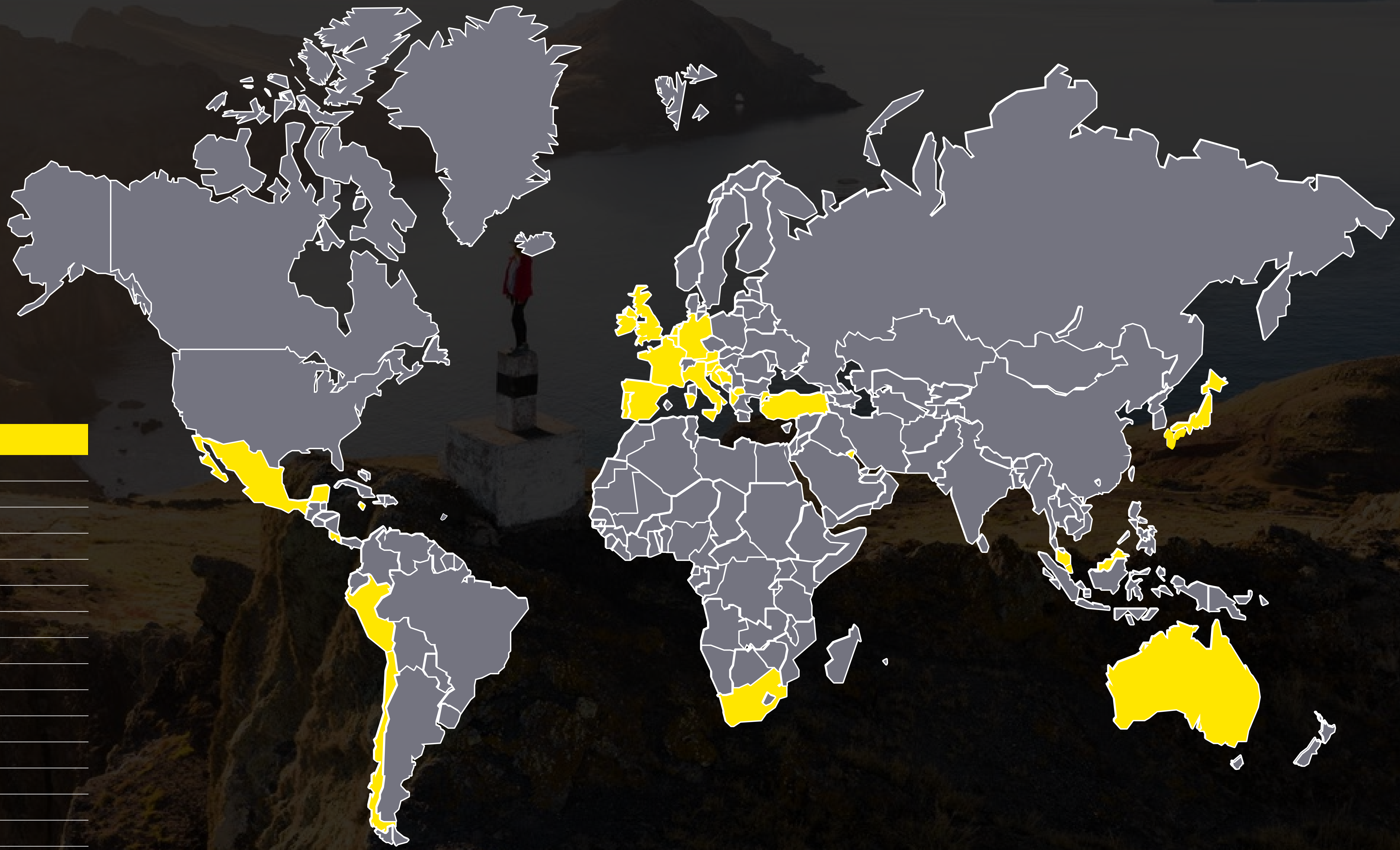
Does not want any of the PE article

Wants all PE articles

Wants some of the PE articles

General overview PE positions of the MLI

Highlighted jurisdictions	Highlighted jurisdictions
Albania	Kuwait
Australia	Luxembourg
Austria	Macedonia
Belgium	Malaysia
Bosnia and Herzegovina	Mexico
Chile	Netherlands
Costa Rica	Peru
Croatia	Portugal
Curaçao	San Marino
France	Singapore
Germany	Slovenia
Ireland	South Africa
Italy	Spain
Jamaica	Turkey
Japan	United Kingdom



Does not want any of the PE article

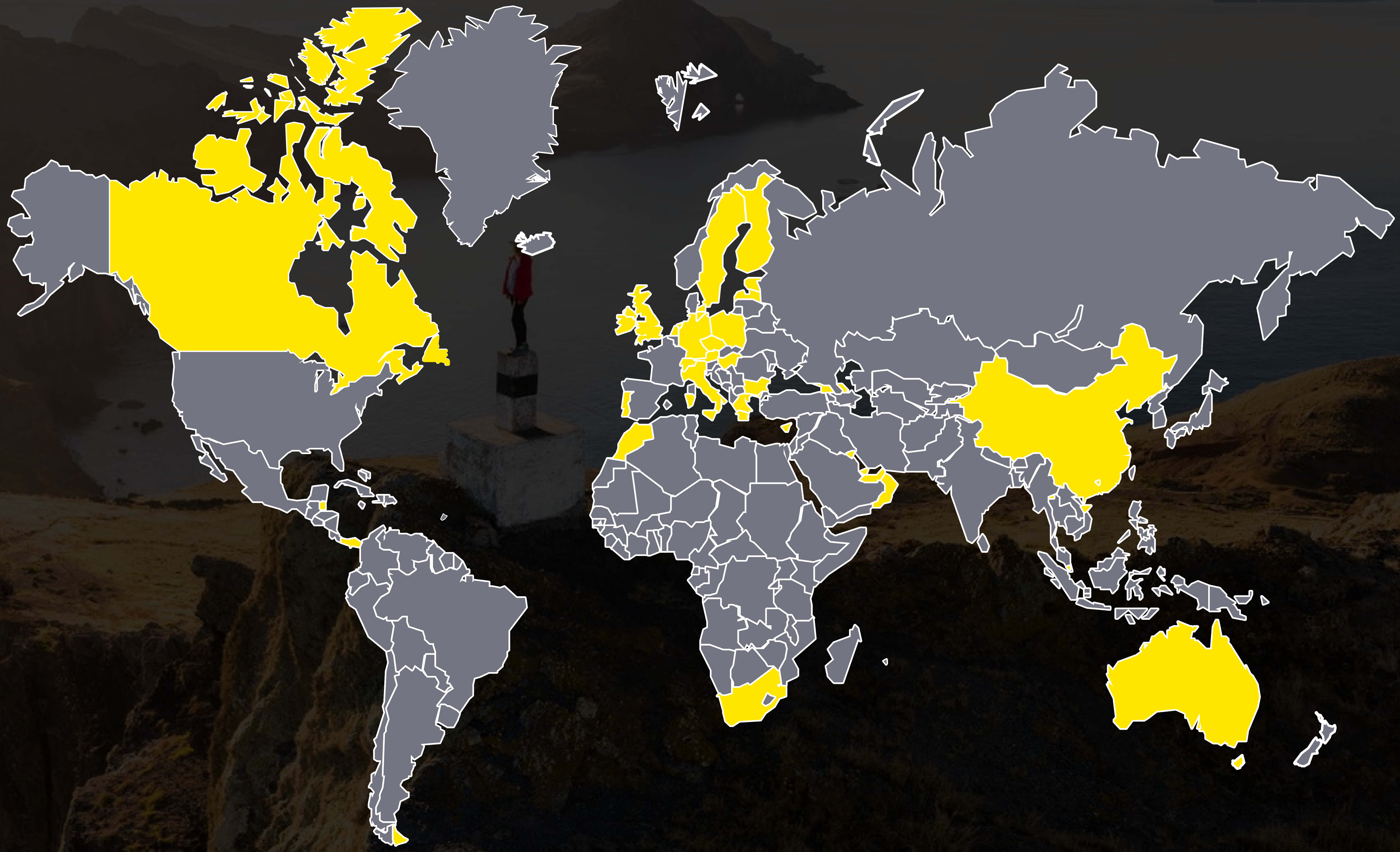
Wants all PE articles

Wants some of the PE articles

BEPS multilateral instrument

Article 12 (Agency PE)

Highlighted jurisdictions	Highlighted jurisdictions
Andorra	Jersey
Australia	Korea
Austria	Kuwait
Bahrain	Latvia
Barbados	Liechtenstein
Belize	Luxembourg
Bulgaria	Malta
Canada	Mauritius
China	Monaco
Curaçao	Morocco
Cyprus	Netherlands
Czech Republic	Oman
Estonia	Panama
Finland	Poland
Georgia	Portugal
Germany	Qatar
Greece	San Marino
Guernsey	Seychelles
Hong Kong	Singapore
Hungary	South Africa
Iceland	Sweden
Ireland	Switzerland
Isle of Man	United Arab Emirates
Italy	United Kingdom



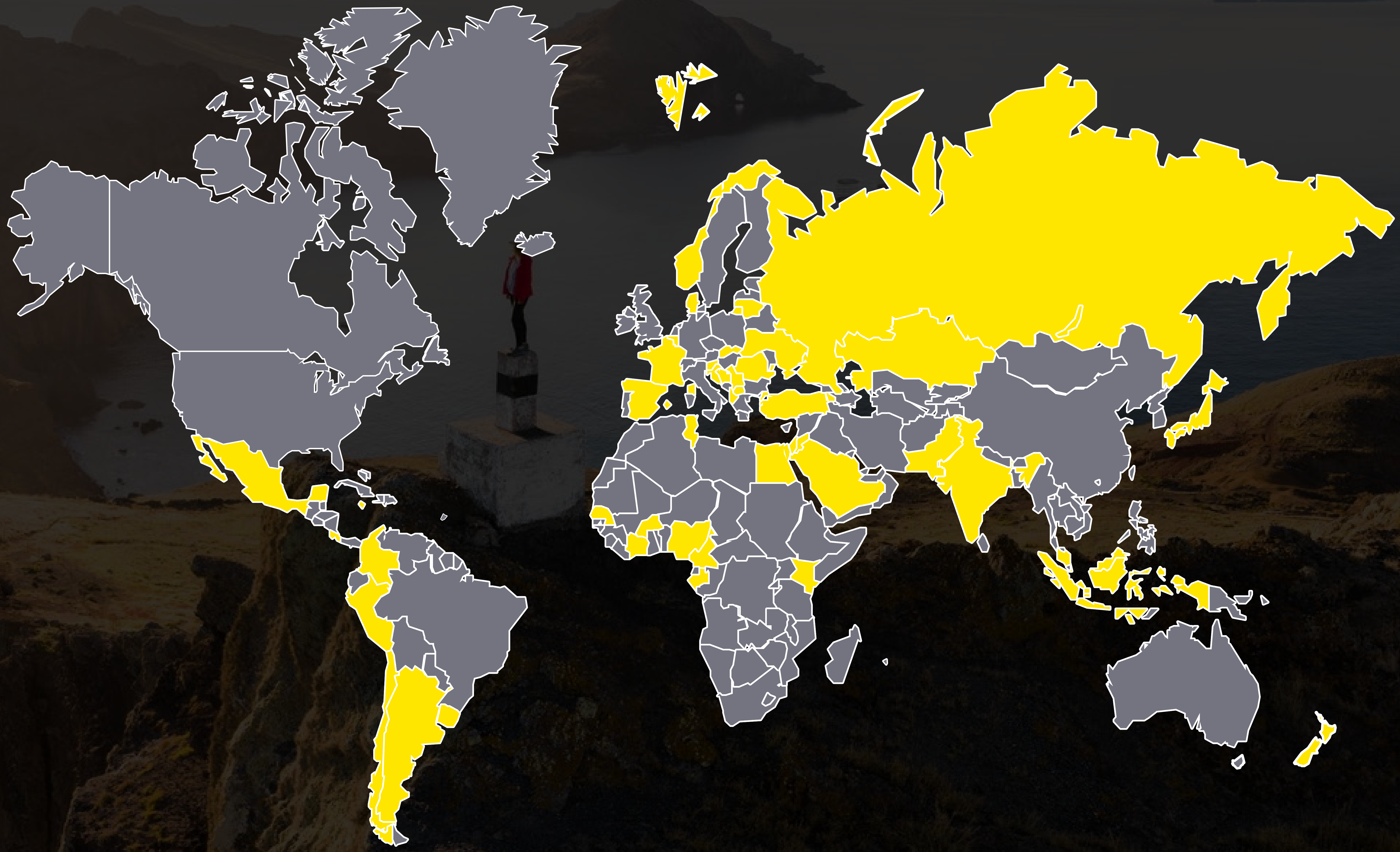
Does not want Article 12

Wants Article 12

BEPS multilateral instrument

Article 12 (Agency PE)

Highlighted jurisdictions	Highlighted jurisdictions
Albania	Kenya
Argentina	Lithuania
Armenia	Macedonia
Belgium	Malaysia
Bosnia and Herzegovina	Mexico
Burkina Faso	Namibia
Cameroon	New Zealand
Chile	Nigeria
Colombia	Norway
Costa Rica	Pakistan
Cote d'Ivoire	Peru
Croatia	Romania
Denmark	Russia
Egypt	Saudi Arabia
Fiji	Senegal
France	Serbia
Gabon	Slovakia
India	Slovenia
Indonesia	Spain
Israel	Tunisia
Jamaica	Turkey
Japan	Ukraine
Jordan	Uruguay
Kazakhstan	Papau New Guinea



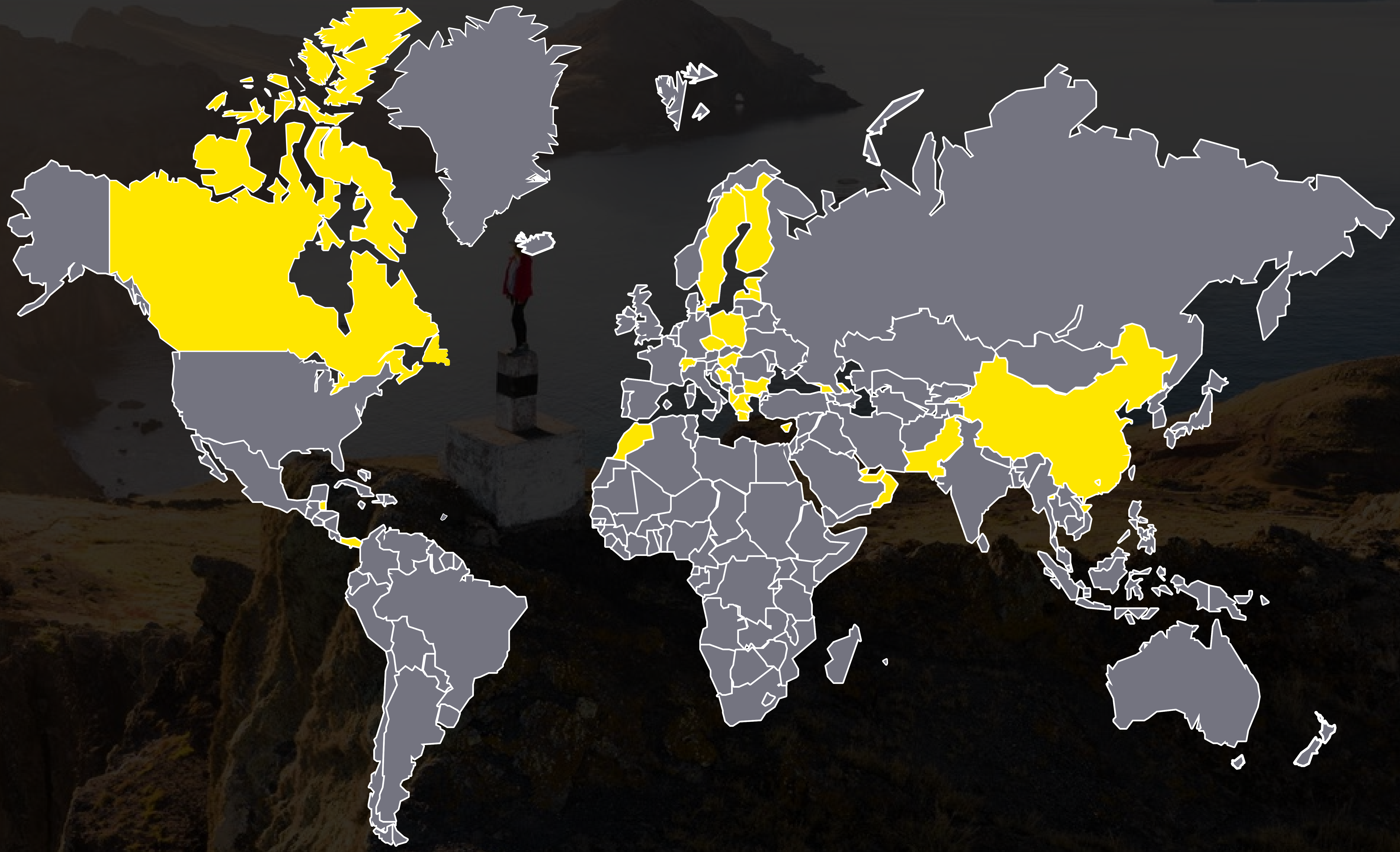
Does not want Article 12
Wants Article 12

BEPS multilateral instrument

Article 13 (specific activity exemptions)

Highlighted jurisdictions
Andorra
Albania
Bahrain
Barbados
Belize
Bosnia and Herzegovina
Bulgaria
Canada
China
Cyprus
Czech Republic
Estonia
Finland
Georgia
Greece
Guernsey
Hong Kong
Hungary
Iceland

Highlighted jurisdictions
Isle of Man
Jersey
Korea
Latvia
Liechtenstein
Malta
Mauritius
Monaco
Morocco
Oman
Pakistan
Panama
Poland
Qatar
Seychelles
Sweden
Switzerland
United Arab Emirates



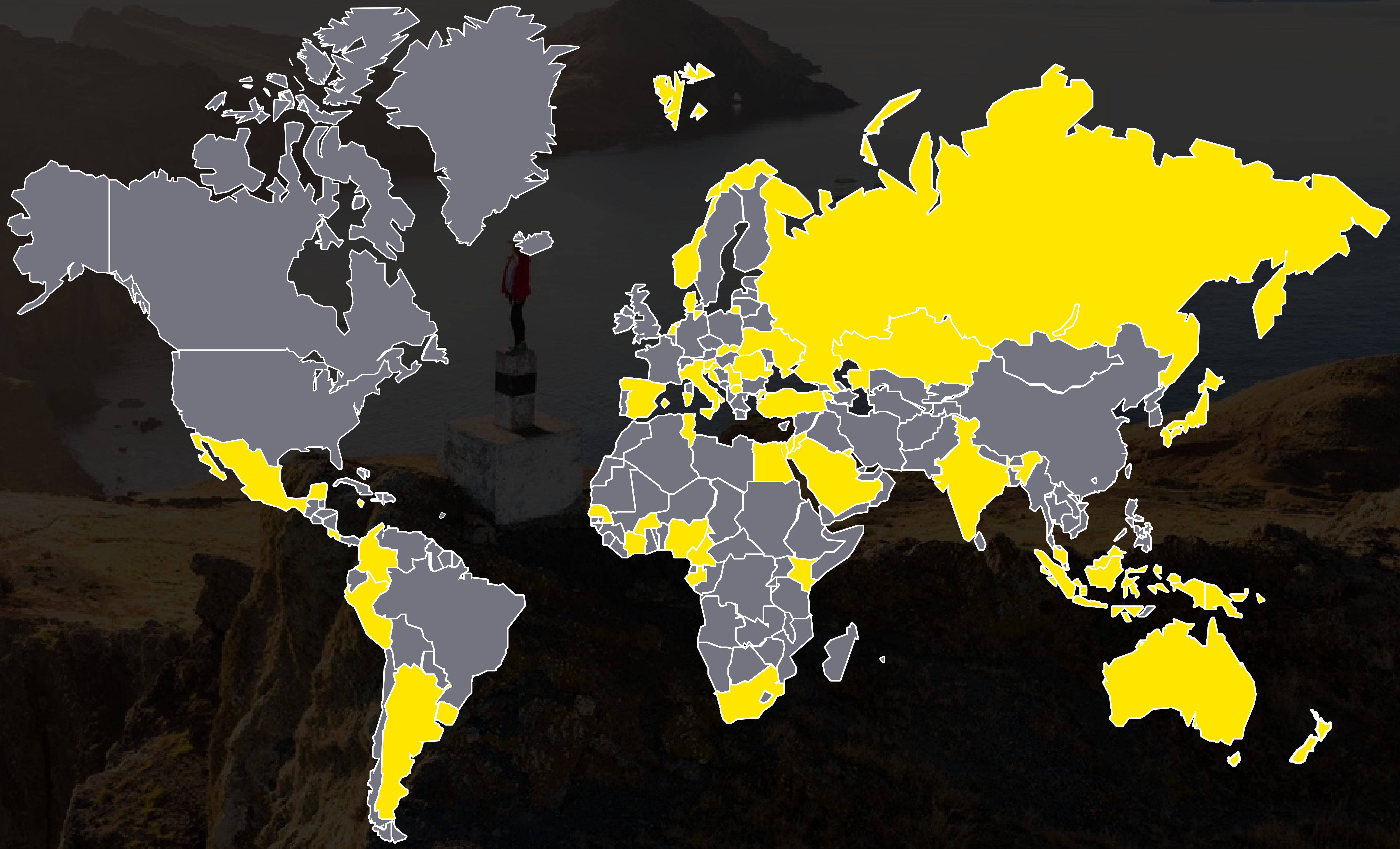
Does not want MLI Article | Want MLI Article 13-Option A | Want MLI Article 13-Option B | Want MLI Article 13-No Option

BEPS multilateral instrument

Article 13 (specific activity exemptions)

Highlighted jurisdictions
Argentina
Armenia
Australia
Austria
Burkina Faso
Cameroon
Colombia
Costa Rica
Cote d'Ivoire
Croatia
Curaçao
Denmark
Egypt
Fiji
Gabon
Germany
India
Indonesia
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya

Highlighted jurisdictions
Kuwait
Macedonia
Malaysia
Mexico
Namibia
Netherlands
New Zealand
Nigeria
Norway
Papua New Guinea
Peru
Romania
Russia
Saudi Arabia
Senegal
Serbia
Slovakia
Slovenia
South Africa
Spain
Tunisia
Turkey
Ukraine
Uruguay



Does not want MLI Article
Want MLI Article 13-Option A
Want MLI Article 13-Option B
Want MLI Article 13-No Option

BEPS multilateral instrument

Article 13 (specific activity exemptions)

Highlighted jurisdictions
Belgium
France
Ireland
Lithuania
Luxembourg
San Marino
Singapore

Does not want MLI Article

Want MLI Article 13-Option A

Want MLI Article 13-Option B

Want MLI Article 13-No Option

BEPS multilateral instrument

Article 13 (specific activity exemptions)

Highlighted jurisdictions
Chile
Portugal
United Kingdom

Does not want MLI Article

Want MLI Article 13-Option A

Want MLI Article 13-Option B

Want MLI Article 13-No Option

BEPS multilateral instrument

Article 14 (contract splitting rule)

Highlighted jurisdictions
Andorra
Albania
Austria
Bahrain
Barbados
Belgium
Belize
Bosnia and Herzegovina
Bulgaria
Canada
Chile
China
Costa Rica
Croatia
Curaçao
Cyprus
Czech Republic
Estonia
Finland
France
Georgia
Germany
Greece
Guernsey
Hong Kong
Hungary
Iceland
Isle of Man
Italy
Jamaica
Japan

Highlighted jurisdictions
Jersey
Korea
Latvia
Liechtenstein
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Monaco
Morocco
Oman
Pakistan
Panama
Peru
Poland
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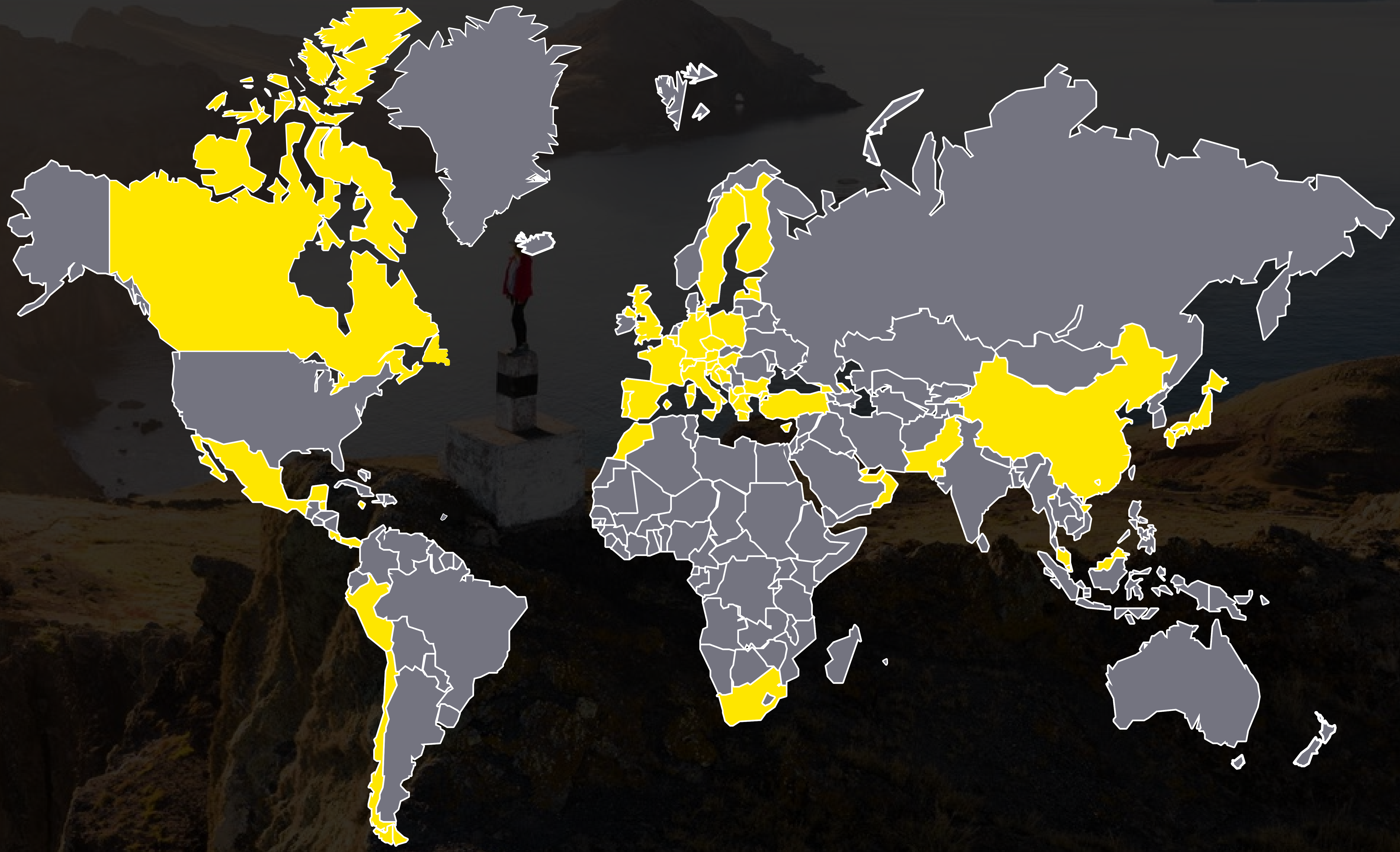
Slovenia
South Africa
Spain
Sweden
Switzerland
Turkey
United Arab Emirates
United Kingdom



Does not want Article 14

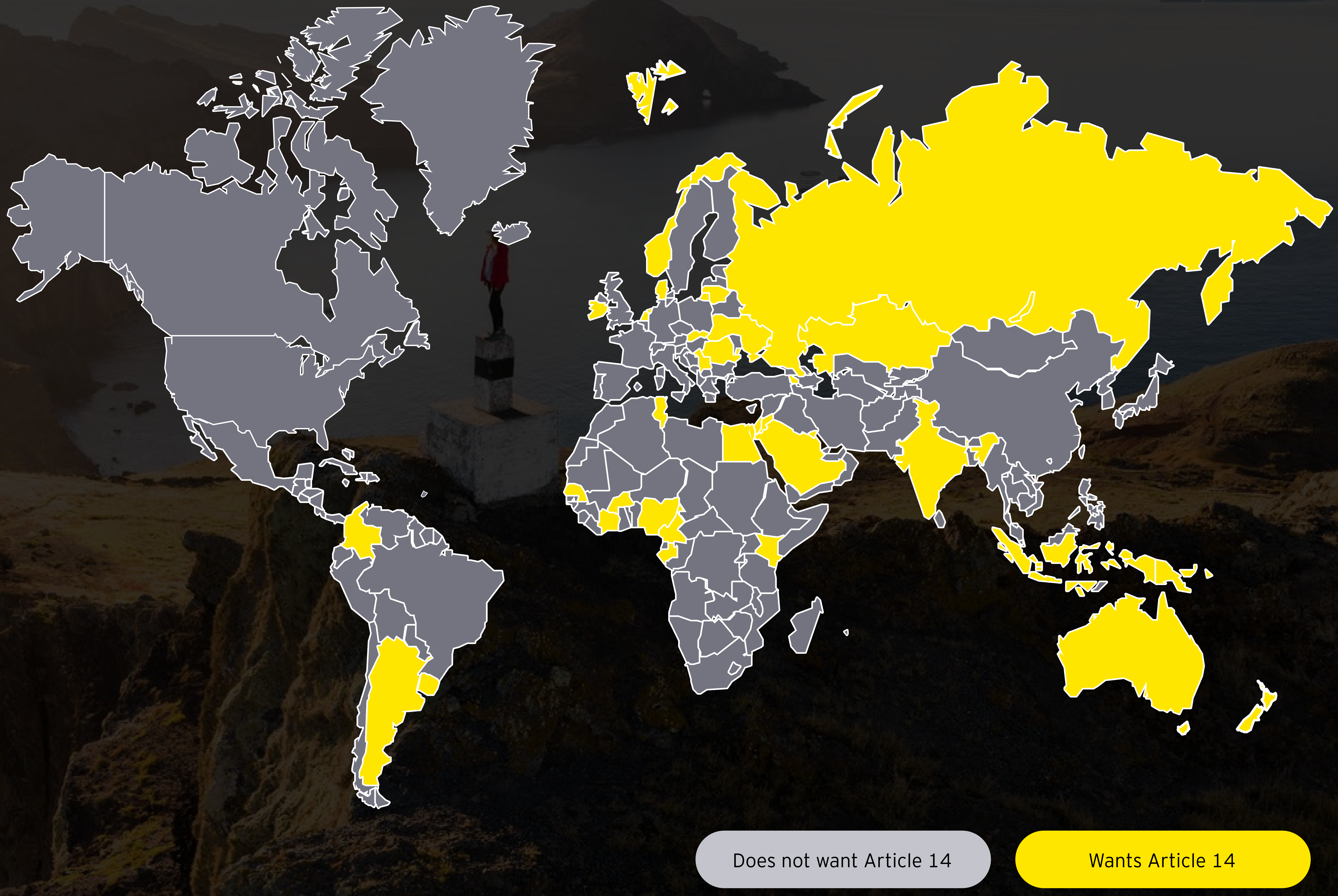
Wants Article 14

BEPS multilateral instrument

Article 14 (contract splitting rule)

Highlighted jurisdictions
Argentina
Armenia
Australia
Burkina Faso
Cameroon
Colombia
Cote d'Ivoire
Denmark
Egypt
Fiji
Gabon
India
Indonesia
Ireland
Israel
Jordan
Kazakhstan
Kenya

Highlighted jurisdictions
Kuwait
Lithuania
Namibia
Netherlands
New Zealand
Nigeria
Norway
Papua New Guinea
Romania
Russia
Saudi Arabia
Senegal
Serbia
Slovakia
Tunisia
Ukraine
Uruguay



Controversy

Over the years, the concept of PE has been in the spotlight of a number of tax audits and cross-border transactions. Tax transparency has become more relevant for tax authorities which are now cooperating with one another across borders. Also, tax administrations are evolving and using constantly new technologies (e.g., Artificial Intelligence, Blockchain) to facilitate the use of information obtained through different channels, securing a more holistic picture of taxpayers and/or taxable events. With this in mind and considering a background of rapidly changing tax rules, fundamental changes on how and where people work, a new era of tax controversy is likely to emerge.

A recurrent topic in controversy during 2021 was cross-border remote working. Denmark was very active in this regard and issued some tax rulings to clarify whether certain activities carried on in the employee's home could be considered to create a PE for the nonresident employer. As part of the case law in the covered year, a French case provides interesting opinions in those cases where tax authorities impose penalties to taxpayers for not disclosing a PE.

In the coming years, it is likely that tax authorities will have an increased appetite for tax revenue due to the support spending during the COVID-19 pandemic. Consequently, many tax administrations may destine more resources for the pursuit of audits, including PE issues. According to the EY TP and International Tax Survey, another issue to monitor is the attribution of profits to PE which is predicted to be the most important area of PE controversy in the following years.

Country developments

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Tax rulings

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