

# Flexibility in International Institutional Design The Case of the OECD MLI

Jing Qian

Princeton University

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  - Article opt-outs and treaty inclusions driven by self-interest calculations

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- However, states have great flexibility to affect MLI applicability

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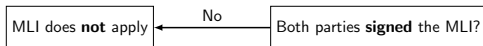
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- Because members can unilaterally veto the applicability
  - Often based on self-interest calculations

# When Would the MLI Modify a Certain BTT Article?

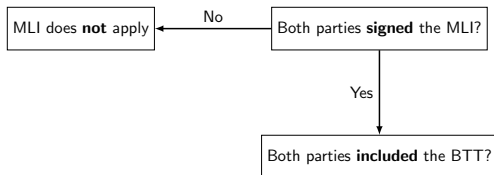
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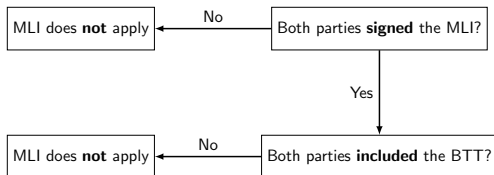
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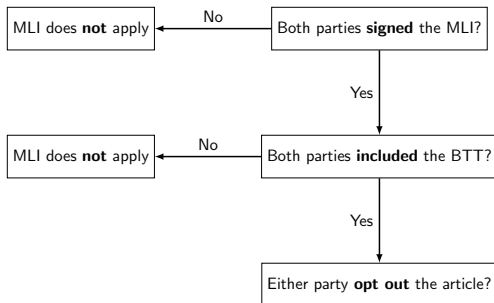
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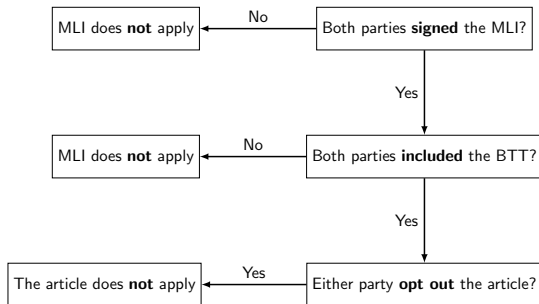
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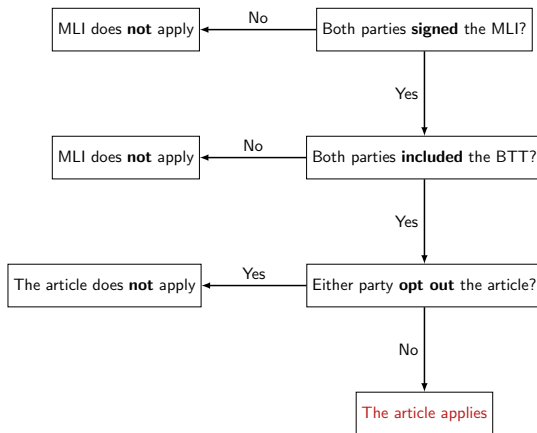


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*Notes:* This figure shows the conditions for a generic article in the OECD MLI to be applicable to a specific bilateral tax treaty. Applicability may vary depending on factors such as whether the article is mandatory for meeting the BEPS minimum standard, whether either party has opted out of the provision, and the existence of similar clauses in the treaty. The final outcome of this flowchart determines whether the article applies to the BTT.

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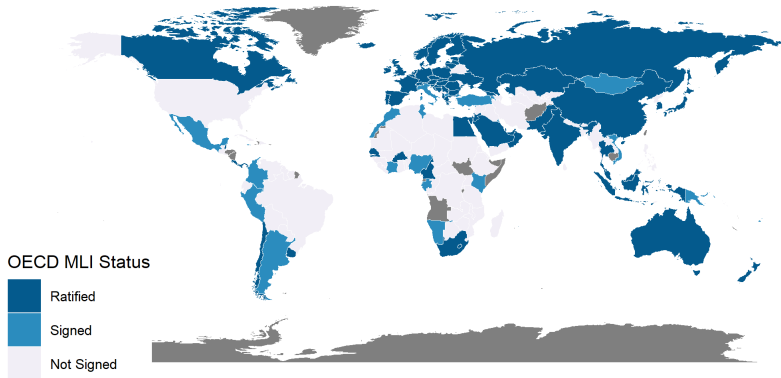
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- CTR: Top corporate income tax rate (Tax Foundation)
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- Treaty-Shopping Risk: Use BTT for indirect payment (Qian 2023)

# Broad Participation in the OECD MLI

Figure: Participants of the OECD MLI



*Notes:* This figure displays the signing and ratification status of the OECD MLI by jurisdictions as of the end of 2022. Of the 100 signatories, 79 have deposited the ratification instrument. Jurisdictions shown in gray either have no active bilateral tax treaties as of 2015 or are overseas territories of other sovereign states.

# Treaty-Shopping Factors Do Not Affect MLI Signature

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## Logit Regression Results

	(1)	(2)	MLI Signature (3)	(4)	(5)
Existing BTTs	1.033*** (0.179)	1.177*** (0.236)	1.167*** (0.245)	1.203*** (0.285)	1.219*** (0.288)
High Income	1.753*** (0.494)	1.799** (0.880)	1.801** (0.881)	3.265** (1.560)	3.060** (1.517)
CTR	0.009 (0.302)	0.092 (0.494)	0.086 (0.497)	0.437 (0.557)	0.554 (0.565)
Inward FDI (% GDP)		0.197 (0.293)	0.195 (0.294)	0.056 (0.325)	-0.121 (0.342)
Electoral Democracy		3.406*** (1.109)	3.383*** (1.119)	3.155** (1.410)	2.646* (1.440)
Phantom FDI			0.002 (0.017)	0.004 (0.019)	0.008 (0.020)
Tax Revenue				0.071* (0.041)	0.083* (0.043)
Tax Haven					1.910 (1.178)
Observations	180	160	159	147	147

Notes: Results from logistic regression. The dependent variable equal to 1 if the jurisdiction has signed the OECD MLI by the end of 2022.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ .

# Treaty-Shopping Factors Do Not Affect MLI Signature

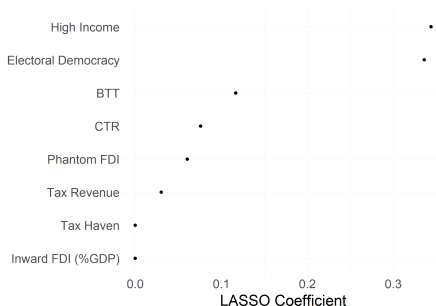
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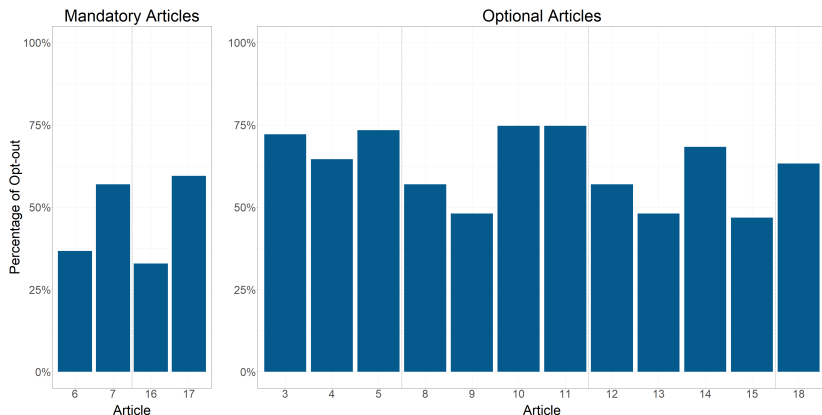
## Lasso Results for Variable Selection



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# Article Opt-Outs Prevalent Among MLI Ratifiers

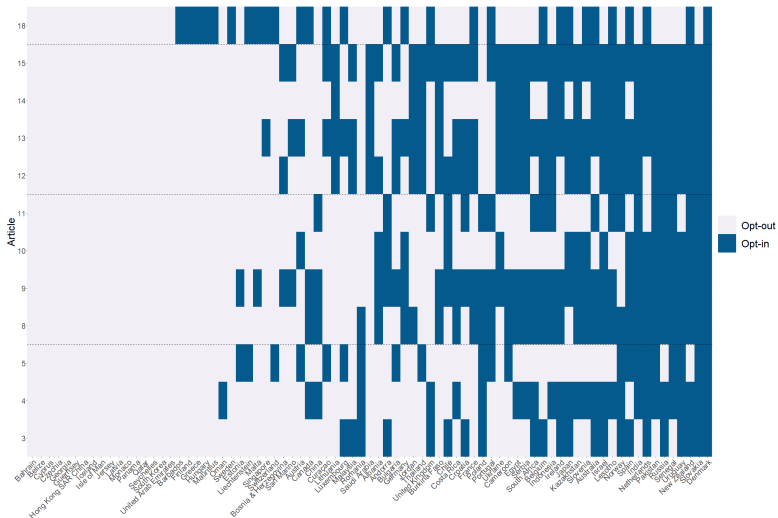
Figure: Proportion of Article Opt-Outs, Jurisdiction-Level



Notes: The left panel displays the percentage of jurisdictions that opted for the least demanding option for each of the four mandatory articles. The right panel shows the percentage of jurisdictions that chose to opt-out of the entire article for each of the optional articles. The data is based on a sample of 79 jurisdictions that deposited the ratification instrument by the end of 2022.

# Huge Variation in Opt-Outs Across Jurisdictions

Figure: Opt-Outs of MLI Articles





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## OLS Regression Results

	Number of Opt-outs				
	(1)	(2)	(3)	(4)	(5)
BTT	-0.029 (0.041)	0.010 (0.059)	-0.016 (0.062)	-0.012 (0.062)	0.005 (0.064)
High Income	0.136 (0.083)	0.140 (0.101)	0.148 (0.101)	0.080 (0.108)	0.069 (0.108)
CTR	-0.132*** (0.040)	-0.140** (0.067)	-0.158** (0.069)	-0.162** (0.075)	-0.159** (0.075)
Inward FDI (% GDP)		0.069* (0.042)	0.063 (0.042)	0.068 (0.043)	0.030 (0.056)
Electoral Democracy		-0.142 (0.183)	-0.150 (0.183)	0.137 (0.234)	0.128 (0.234)
Phantom FDI			0.004 (0.003)	0.004 (0.003)	0.004 (0.003)
Tax Revenue				-0.002 (0.007)	-0.0005 (0.008)
Tax Haven					0.142 (0.131)
Observations	79	70	70	64	64

*Notes:* Results from ordinary least squares regression. The dependent variable is the total number of articles that the jurisdiction has completely opted-out (optional articles) or opted for the least demanding provision (mandatory articles). The data is based on a sample of 79 jurisdictions that deposited the ratification instrument by the end of 2022.

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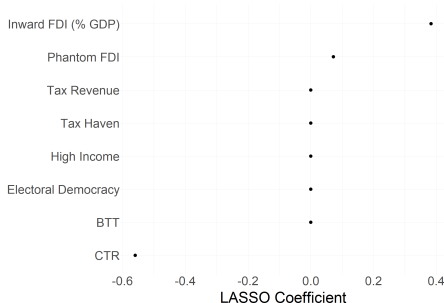
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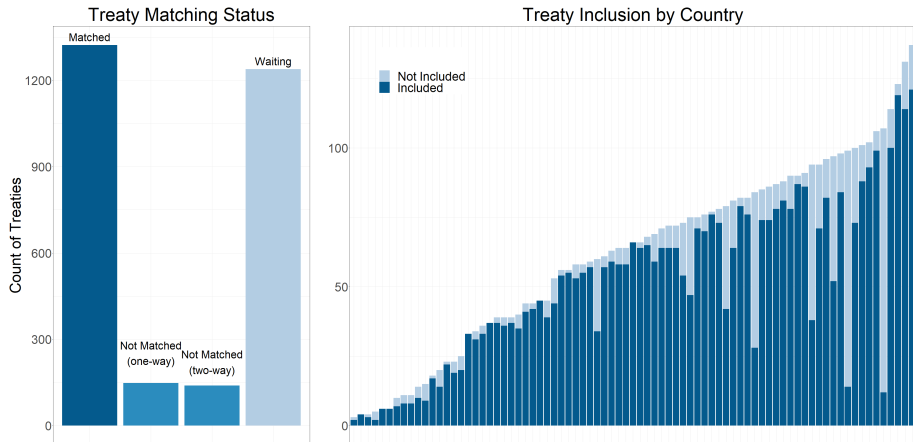
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# Exclusion of BTTs for MLI Coverage Is Prevalent

Figure: Number of Treaties by Matching Status



**Notes:** The figure displays the bilateral tax treaty matching status and MLI coverage across jurisdictions. The left panel shows whether treaties are matched (both parties have notified the treaty), not matched (one party has not notified the treaty, either one-way or two-way), or waiting (the other party has not yet signed the MLI or deposited the ratification instrument). The right panel displays the number of treaties included (or not included) for MLI coverage by each jurisdiction. The data is based on a sample of 79 jurisdictions that deposited the ratification instrument by the end of 2022.

# BTT Exclusion/Inclusion Driven by Treaty-Shopping Concerns

**Table:** Treaty-Shopping and Tax Treaty Notification

	Tax Treaty Notified			
	(1)	(2)	(3)	(4)
Inward FDI	-0.009 (0.014)	0.002 (0.016)	0.017 (0.023)	0.012 (0.016)
Inward Phantom FDI (%)	1.602*** (0.568)	0.681*** (0.216)	1.298** (0.520)	-2.059*** (0.591)
BTT Year	0.802*** (0.091)	0.470*** (0.084)	0.756*** (0.120)	0.505*** (0.085)
Legacy BTT	-1.129*** (0.278)	-0.674*** (0.257)	-1.215*** (0.398)	-0.744*** (0.256)
Host CTR				-0.044*** (0.008)
Host CTR * Inward Phantom FDI (%)				0.119*** (0.026)
Host FE	✓		✓	
Partner FE		✓	✓	✓
Observations	3507	3527	3328	3527

*Notes:* Results from conditional logistic regression. Robust standard errors clustered at host jurisdiction level reported in parentheses. The dependent variable equal to 1 if the tax treaty was notified by the host jurisdiction in its ratification instrument deposited to the OECD. The data is based on a sample of 79 jurisdictions that deposited the ratification instrument by the end of 2022.

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Phantom FDI: Investments through corporate shells (Damgaard et al. 2019)

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**Table:** Article 8 Reservation, Treaty-Shopping, and Tax Treaty Notification

	Tax Treaty Notified		All Sample (3)
	Opt-in Article 8 (1)	Opt-out Article 8 (2)	
Inward FDI	-0.028 (0.028)	0.057* (0.029)	0.016 (0.019)
Inward Phantom FDI (%)	1.937*** (0.605)	-0.088 (0.301)	0.685*** (0.244)
BTT Year	-0.845*** (0.250)	-0.904*** (0.234)	-0.856*** (0.155)
Legacy	-0.017 (0.389)	-1.066** (0.517)	-0.463 (0.289)
Treaty Shopping Risk	1.026** (0.460)	-0.441 (0.442)	-0.302 (0.129)
Opt-in Article 8			0.210 (0.406)
Opt-in Article 8 * Treaty Shopping Risk			1.053* (0.561)
Partner FE	✓	✓	✓
Observations	1348	1072	2926

*Notes:* Results from conditional logistic regression. Robust standard errors clustered at host jurisdiction level reported in parentheses. The dependent variable equal to 1 if the tax treaty was notified by the host jurisdiction in its ratification instrument deposited to the OECD. Column (1) includes only the jurisdictions that have opted-in Article 8 of the MLI. Column (2) includes only the jurisdictions that have opted-out of the entirety of Article 8 of the MLI. The data is based on a sample of 79 jurisdictions that deposited the ratification instrument by the end of 2022.

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  - The reform of bilateral investment treaties (BITs)