

***Objective or Subjective –
Anti-treaty shopping policy in select Asian jurisdictions in the post-BEPS
world***

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ABSTRACT

BEPS Action 6 proposes two distinct anti abuse measures to be incorporated into the OECD Model Convention and subsequently into the various bilateral tax treaties: A Limitation on Benefits (LoB) clause and Principal Purpose Test (PPT). While both anti abuse measures are new to the OECD Model Convention, various countries around the world have implemented either LoB or PPT clauses or both into their tax treaties. This paper analyses the treaty network of eight Asian / Pacific jurisdictions (Australia, China, Hong Kong, Japan, Malaysia, Singapore, and Taiwan) with respect to the anti-abuse measures employed in these treaties. The majority of the more than 500 treaties in the sample do not included an anti-abuse measure of any kind. While the use of anti-abuse rules in general is highly diverse, the choice of the preferred measure if an anti-abuse rule is incorporated in the treaty is quite homogeneous. The one measure most often used is the principal purpose test (or a variation thereof), with 113 individual treaties containing that test. LoB clauses are used in only 16 treaties. The historical development of the treaty networks shows a strong increase in the (relative) importance of the PPT since 43% of all new treaties concluded after 2009 contain such a provision while only 5% of these treaties contain a LoB.

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