

BEPS: Action 15 (Multilateral Tax Instrument)

Desirability. Consistency. Flexibility.

Azamat Berberov
(Finance University, Moscow)

Key Points:

Objective: implement the tax treaty-related BEPS measures as proposed in Action 15 of the BEPS project.

OECD's opinion:

- MTI is «desirable»
- MTI is «feasible»
- MTI will be signed by the end of 2016

Relevance:

- enhancement of coherence between bilateral tax treaties;
- elimination of domination of the developing countries by the developed;
- development of mandatory binding arbitration;

But:

Recent conference in Paris showed that countries **are far from reaching a consensus:**

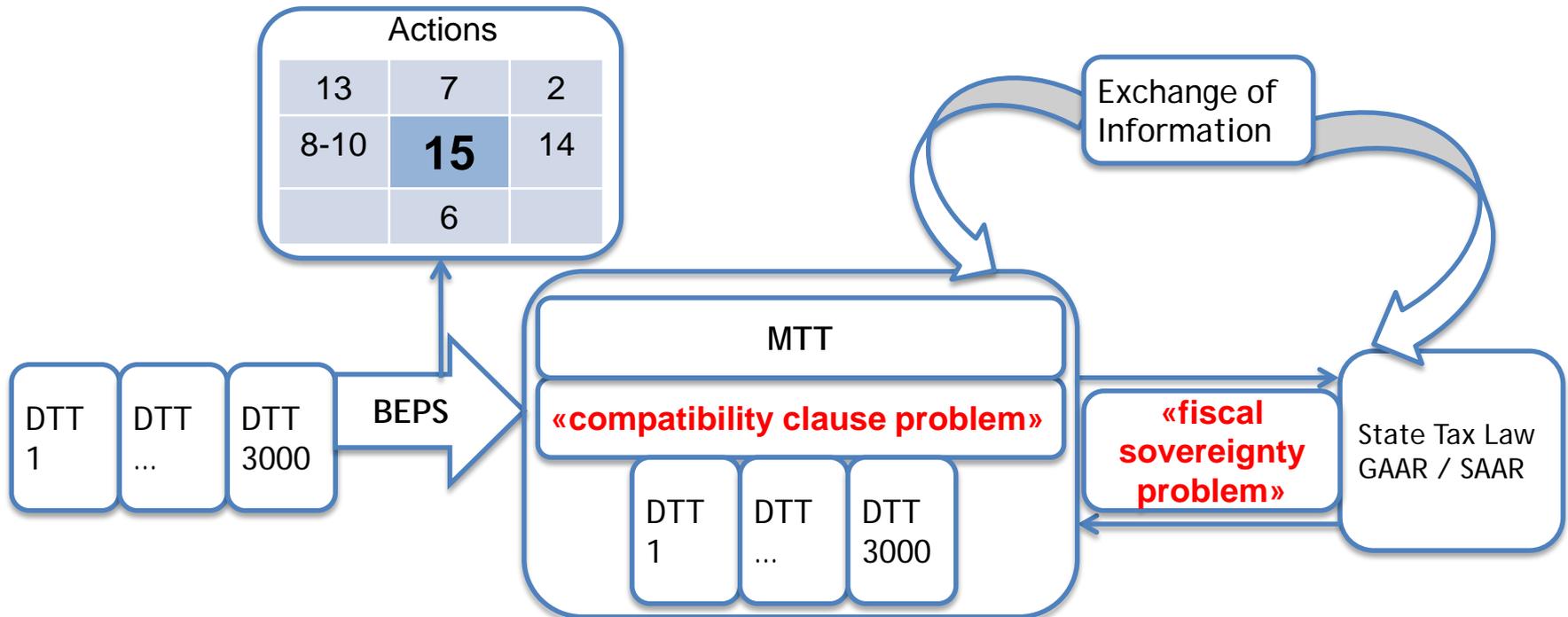
- how to determine the level of liabilities between DTTs and MTI?
 - how to achieve provision's flexibility in MTI?
- how to avoid the problem of «fiscal sovereignty» of states?



Desirability:

OECD's opinion: the benefits are numerous – while burdens can be addressed or avoided

Influence of Multilateral Tax instrument on «international tax architecture»:



Conclusion: Multilateral Tax Instrument **is the most rational** instrument for implementation of BEPS measures in DTT

How to achieve consistency between DTTs and MTI?

OECD's answer: by **introducing compatibility clauses**, which will include regulatory provisions about scope of the MTI and DTT's

This instrument is **being used successfully in different multilateral conventions** (for example in UN Climate Convention)

But tax experts **are divided on** the question of compatibility clauses:

| For CC | Against CC | Alternative opinions / instruments |
|--------|--------------------------------------|---|
| AIMA | BEPS Monitoring Group | Inventory of all treaties |
| BDI | Confederation of Swedish Enterprises | CC is counterproductive because of differences in DTTs |
| | EY | Elaboration of minimum standards |
| | USCIB | Compatibility clauses will not be able to personalize the text of the agreement |

Flexibility:

OECD's opinion: there are two types of flexibility: **internal** and **external**

| Types of Flexibility | |
|--|--|
| Internal | External |
| Problem | |
| Flexibility of Provisions | Single Level of Agreement Liabilities between States |
| Solution | |
| <ul style="list-style-type: none">– opt-in mechanism– opt-out mechanism | is still under development |

Opinions of tax experts / authorities:

- conception of «tax arbitrage» will **conflict** with national tax law in **India**;
- but the USA **will not sign** MTA without «tax arbitrage»;
- countries with «high level of sovereignty» (Russia, China, etc) **will not sign** MTA;
- provisions of MTA **can conflict with EU supranational tax law**;
- there is no **consensual position** of BRICS members (Brazil, South Africa, etc)

Conclusion:

1. From the position of «desirability» multilateral tax instrument **is the most rational tool** for implementation BEPS measures in DTT
2. There may be **problems with the compatibility clauses** implementation in MTA because of differences in DTTs
3. Usage of the «opt-in» and «opt-out» mechanisms **will allow to achieve the optimal level** of internal flexibility provisions for all parties of a multilateral tax treaty.
4. The external flexibility achievement issue is more difficult than internal and needs more time to spend on.