

BEPS: Action 15 (Multilateral Tax Instrument)

Desirability. Consistency. Flexibility.

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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:

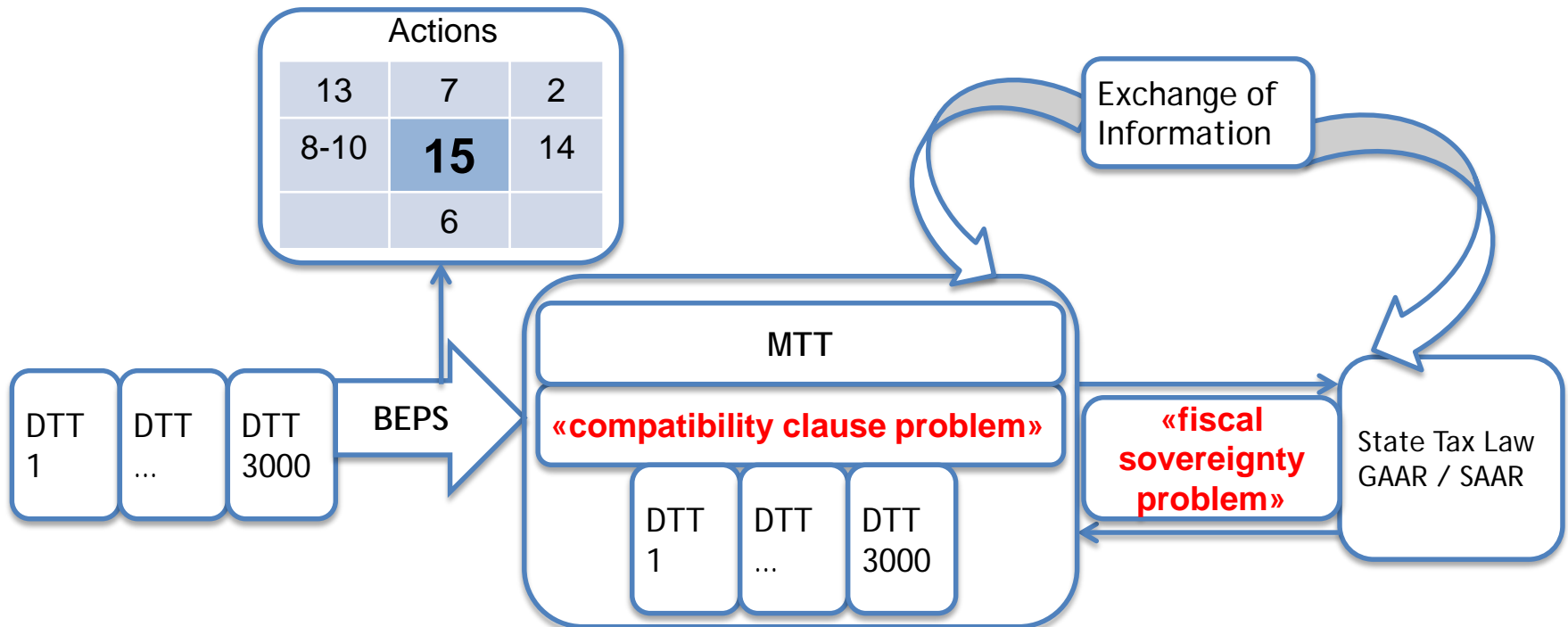
Recent conference in Paris showed that countries **are far from reaching** a consensus:

- 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.