Multilateral Tax Treaty: if we build it, will they come?

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In many respects a multilateral tax treaty represents an idiosyncratic view of international law, with a wide consensus among nation states to submit themselves to a common set of rules that govern the identity of taxes across national boundaries.

While there have been several examples of attempts at multilateral double taxation treaties, such as the Nordic Treaty (Multilateral Tax Agreement between Denmark, Finland, Iceland, Norway and Sweden), these have largely been limited to specific regional groupings due to widely differing convention-making objectives for tax treaties, where there are competing linguistic, legal and cultural assumptions. The EU Arbitration Convention of 2013 and the OECD Mutual Assistance Convention both seek to harmonize aspects of international taxation, being confirmed by tax administration or the tax authorities for the information of tax.

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Implementation of BEPS treaty actions

The multinational project contemplated by the Action 15 is far from alone: the past of action 15 to classify the implementation of the BEPS project. The action has been long enough that it seeks to harmonize diverse national tax regimes by a single international instrument. The initiative is aimed at achieving a single multilateral agreement (MNA) that will harmonize international tax law. The object of the MNA is to ensure that the treaty is able to harmonize effective measures to prevent tax avoidance.

The multilateral approach involves a number of initiatives: the Action 15 multilateral agreement is a complex one with multiple objectives. The OECD has made it clear that the MNA will not make a treaty that is similar to the existing multilateral double taxation treaties. The instrument will provide legal certainty for those states that will be parties to it, and will also provide a mechanism for resolving disputes that may arise.

Technical challenges

The process of the work product of the treaty-related BEPS actions is likely to be the technically complex part of the project. Improving dispute-resolution mechanisms is likely to be a more challenging. Dispute-resolution is not a driver of the BEPS project but rather a consequence of the desire to prevent tax avoidance.

The proposed instrument will focus only on giving legal effect to BEPS treaty-related measures: hybrid instruments (Action 2), treaty abuse (Action 6), permanent establishments (Action 7), and possibly new rules in Action 15. In the regard it also affects the EU Arbitration Convention, which provides for the resolution of disputes under treaties.

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Who will come to the party?

The ad hoc Group on this project has over 80 countries participating. The notable exception is the United States which is observing the negotiations only. Not all participants are committed to sign. At the 2015 IFA Congress it was reported that some 20 countries among the participants had indicated an initial interest in the multilateral project.

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