



BEPS AND CROSS-BORDER TAX DISPUTES

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Action 14: Making Dispute Resolution Mechanisms More Effective

Final report (October 2015):

- minimum standard and best practices on dispute resolution;
- monitoring mechanism;
- mandatory binding arbitration.





Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

- developed through a negotiation involving more than 100 jurisdictions;
- adopted and released on 24 November 2016;
- signed on 7 June 2017 in Paris by 67 jurisdictions , including Russia, China, India, South Africa (no Brasil);
- two equally authentic languages – English and French.



Three categories of provisions of MLI: effectiveness vs flexibility

- minimum standard;
- provisions that apply to the DTT of the parties provided that no reservation has been made, but without need for explicit choice;
- provisions that do not apply unless specially chosen by the parties.



MLI on dispute resolution:

- minimum standard on mutual agreement procedure;
- optional provisions on arbitration.



Part V MLI:

- article 16 in essence seeks to update the existing DDTs to the current version of the OECD Model Tax Convention with some innovations;
- article 17: transfer pricing adjustments.



Part VI MLI:

- general provisions;
- the appointment of arbitrators;
- confidentiality of the proceedings;
- resolution of the case prior to the delivery of the arbitral decision;
- alternative types of arbitration processes;
- the states' margin to agree on a resolution of the issues different from the one concluded by the arbitrators;
- procedural costs.



For discussion:

- protection of taxpayers' rights - rules on active taxpayer participation in the arbitration process, requirements to publication of decisions;
- discretion of competent authorities at initiation of arbitration;
- limitations for the timeframe for the MAP;
- reduction of the binding nature of arbitration by review and suspension;
- other alternative dispute resolution methods (mediation, conciliation, expert opinion).



Thank you for your attention!

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