

THE MULTILATERAL INSTRUMENT

CHALLENGES & TOOLS
AVAILABLE TO
IMPLEMENT A
MULTILATERAL
INSTRUMENT (“M.L.I.”)

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Multilateral Instrument

- Options:
 - To amend international tax treaties already in place
 - To develop a Multilateral Instrument (“M.L.I.”)
 - B.E.P.S. Action 15

Modifying Bilateral Tax Treaties

- Current bilateral tax treaties focus on the elimination of double taxation
- Interplay between domestic and International tax law creates B.E.P.S.
- Updating bilateral tax treaties is burdensome and time consuming

Multilateral Instrument

- B.E.P.S. Action 15:
- To introduce coherence in the domestic rules that affect cross-border activities,
- To reinforce substance requirements in the existing international standards, and
- To improve transparency as well as certainty

Challenges

- Vagueness & Ambiguity
- Efficiency v. Sovereign Autonomy
- Facilitating speedy action and innovation
- Flexibility in the level of commitment

Multilateral Instrument

- An M.L.I. is desirable and feasible
 - But, overcoming traditional obstacles to swiftly implement agreed tax treaty measures will require political willingness to act

Multilateral Instrument

- Action 15 provides tool box of options that can be utilized to develop an M.L.I.
 - To achieve concurrent and cohesive treatment:
 - Compatibility clauses,
 - Flexibility of provisions, and
 - Transparency and clarity

Compatibility Causes (Conflict Clauses)

- Negotiable start date
- Accompanying commentaries
- Use of amendments

Flexibility of Provisions

- Level of Commitment
 - Opt-out mechanism (with some limitations)
 - Opt-in mechanisms
- Alternative Provisions
- Flexible Wording
 - “will,” “shall,” “must” v. “may”

Transparency and Clarity

- Publication to ensure clarity and transparency
- Limit the number of languages to negotiate and sign the M.L.I.
- Provide translation at later time

Treaty Provisions at Issue

- Multi-Country Disputes
- Dual Residency
- Linking Rules
- Profit Shifting
- Treaty Shopping

In Conclusion

- Taxation is a core right, if the M.L.I. infringes upon this right, countries may resist
 - Countries should retain the right to:
 - Tax, or
 - Forebear from taxing

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