كلية الشريعة والقانون بدمنهور

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Impact of the Implementation of Multilateral Convention on Tax Treaty on Base Erosion and Profit Shifting (BEPS)

أثر تنفيذ الاتفاقية المتعددة الأطراف بشأن المعاهدة الضريبية بشأن تآكل الوعاء الضريبي وتحويل الأرباح

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مجلـة البحـوث الفقهيـة والقانونيـة
مجلة علمية عالمية متخصصة ومُحكمة
من السادة أعضاء اللجنة العلمية الدائمة والقارئة
في كافة التخصصات والأقسام العلمية بجامعة الأزهر

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المجلة حاصلة على تقييم ٨ من المكتبة الرقمية لجامعة الأزهر

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سعادة أ. د. رئيس تحرير مجلة البحوث الفقهية و القانونية المحترم

جامعة الأزهر، كلية الشريعة و القانون، دمنهور، مصر

تحية طيبة وبعد،،،

يسر **معامل التأثير والاستشهادات المرجعية للمجلات العلمية العربية (ارسيف – ARCIF)**، أحد مبادرات قاعدة بيانات "**معرفة**" للإنتاج والمحتوى العلمي، إعلامكم بأنه قد **أطلق التقرير السنوي التاسع للمجلات للعام 2024**.

يخضع معامل التأثير "ارسيف Arcif" لإشراف "مجلس الإشراف والتنسيق" الذي يتكون من ممثلين لعدة جهات عربية ودولية: (مكتب اليونيسكو الإقليمي للتربية في الدول العربية ببيروت، لجنة الأمم المتحدة لغرب آسيا (الإسكوا)، مكتبة الاسكندرية، قاعدة بيانات معرفة). بالإضافة للجنة علمية من خبراء وأكاديميين ذوي سمعة علمية رائدة من عدة دول عربية وبريطانيا.

ومن الجدير بالذكر بأن معامل "**ارسيف Arcif**" قام بالعمل على فحص ودراسة بيانات ما يزيد عن **(5000)** عنوان مجلة عربية علمية أو بحثية في مختلف التخصصات، والصادرة عن أكثر من **(1500)** هيئة علمية أو بحثية في العالم العربي. ونجح منها **(1201)** مجلة علمية فقط لتكون معتمدة ضمن المعايير العالمية لمعامل "**ارسيف Arcif**" في تقرير **عام 2024.**

ويسرنا تهنئتكم وإعلامكم بأن **مجلة البحوث الفقهية و القانونية** الصادرة عن **جامعة الأزهر، كلية الشريعة و القانون، دمنهور، مصر، قد نجحت في تحقيق معايير اعتماد معامل "ارسيف Arcif"** المتوافقة مع المعايير العالمية، والتي يبلغ عددها **(32) معياراً**، وللاطلاع على هذه المعايير يمكنكم الدخول إلى الرابط التالي: http://e-marefa.net/arcif/criteria/

وكان **معامل "ارسيف Arcif" العام** لمجلتكم لسنة 2024 **(0.3827)**. ونهنئكم بحصول المجلة على:

- **المرتبة الأولى** في **تخصص الدراسات الإسلامية** من **إجمالي عدد المجلات (103)** على المستوى العربي، مع العلم أن **متوسط معامل "ارسيف" لهذا التخصص** كان **(0.082)**. كما صُنفت مجلتكم في هذا التخصص ضمن الفئة **(Q1)** وهي الفئة العليا .
- كما صُنفت مجلتكم في **تخصص القانون** من **إجمالي عدد المجلات (114)** على المستوى العربي ضمن الفئة **(Q2)** وهي الفئة الوسطى المرتفعة ، مع العلم أن **متوسط معامل "ارسيف" لهذا التخصص** كان **(0.24)**.

راجين العلم أن حصول أي مجلة ما على مرتبة ضمن الأعلى (10) مجلات في **تقرير معامل "ارسيف" لعام 2024** في أي تخصص، لا يعني حصول المجلة بشكل تلقائي على تصنيف مرتفع كتصنيف فئة Q1 أو Q2، حيث يرتبط ذلك بإجمالي قيمة النقاط التي حصلت عليها من **المعايير الخمسة المعتمدة لتصنيف مجلات تقرير"ارسيف" (للعام 2024) إلى فئات في مختلف التخصصات**، ويمكن الاطلاع على هذه المعايير الخمسة من خلال الدخول إلى الرابط: http://e-marefa.net/arcif /

وبإمكانكم الإعلان عن هذه النتيجة سواء على موقعكم الإلكتروني، أو على مواقع التواصل الاجتماعي، وكذلك الإشارة في النسخة الورقية لمجلتكم إلى معامل "**ارسيف Arcif**" الخاص بمجلتكم.

ختاماً، في حال رغبتكم الحصول على شهادة رسمية إلكترونية خاصة بنجاحكم في معامل "**ارسيف**"، نرجو التواصل معنا مشكورين.

وتفضلوا بقبول فائق الاحترام والتقدير

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ملخص البحث:

أهمية البحث:

كيفية مكافحة استراتيجيات التخطيط الضريبي التي تستخدمها الشركات المتعددة الجنسيات التي تستغل الثغرات وعدم التطابق في القواعد الضريبية لتجنب دفع الضرائب على أساس الصك المتعدد الأطراف، للحفاظ على دور اتفاقيات ضريبة الدخل الثنائية ، في القضاء على الازدواج الضريبي على مستوى العالم والتآكل القاعدي وتحويل الأرباح من خلال اعتماد منظمة التعاون الاقتصادي والتنمية بالتعاون مع دول مجموعة العشرين.

مشكلة البحث :

استراتيجيات التخطيط الضريبي التي تستخدمها الشركات متعددة الجنسيات التي تستغل الثغرات وعدم التطابق في القواعد الضريبية لتجنب دفع الضرائب.

يشير تآكل الوعاء الضريبي ونقل الأرباح إلى استراتيجيات التخطيط الضريبي التي تستغل الثغرات وعدم التطابق في القواعد الضريبية لتحويل الأرباح بشكل مصطنع إلى مواقع منخفضة أو لا توجد بها ضرائب حيث يوجد نشاط اقتصادي قليل أو معدوم أو لتآكل القواعد الضريبية من خلال مدفوعات قابلة للخصم مثل الفوائد أو

الإتاوات. على الرغم من أن بعض المخططات المستخدمة غير قانونية، إلا أن معظمها ليس كذلك. وهذا يقوض عدالة ونزاهة الأنظمة الضريبية لأن الشركات التي تعمل عبر الحدود يمكنها استخدام تآكل الضريبة ونقل الأرباح للحصول على ميزة تنافسية على الشركات التي تعمل على المستوى المحلي. علاوة على ذلك، عندما يرى دافعو الضرائب أن الشركات المتعددة الجنسيات تتهرب قانونا من ضريبة الدخل، فإن هذا يقوض الالتزام الطوعي من جانب كل دافعي الضرائب.

هدف البحث:

تشكل إساءة استخدام المعاهدات الضريبية مصدراً مهماً لتآكل القاعدة الضريبية وتحويل الأرباح. تساعد الاتفاقية الثنائية **MLI** في مكافحة تآكل الضريبة ونقل الأرباح من خلال تنفيذ التدابير المتعلقة بالمعاهدة الضريبية التي تم تطويرها من خلال مشروع تآكل الضريبة ونقل الأرباح في المعاهدات الضريبية الحالية بطريقة متزامنة وفعالة. تمنع هذه التدابير إساءة استخدام المعاهدة، وتحسين حل النزاعات، ومنع التجنب المصطنع لوضع المنشأة الدائمة وتحييد آثار ترتيبات عدم التطابق الهجين.

الكلمات المفتاحية: تآكل القاعدة الضريبية وتحويل الأرباح؛ الاتفاقية المتعددة الأطراف؛ معاهدة ضريبية؛ منظمة التعاون الاقتصادي والتنمية؛ دول مجموعة العشرين.

Impact of the Implementation of Multilateral Convention on Tax Treaty through The Adoption of Organization for Economic Co-operation and Development (OECD) in collaboration with the G20 countries on Base Erosion and Profit Shifting.

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Abstract:

Research Importance:

How to fight tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax based on Multilateral Instrument, **MLI Convention** to preserve the role of bilateral income tax agreements in eliminating double taxation worldwide Base Erosion and Profit Shifting (BEPS) through The Adoption of Organization for Economic Co-operation and Development (OECD) in collaboration with the G20 countries.

Research Objective:

The abuse of tax treaties is an important source of base erosion and profit shifting (BEPS). The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing tax treaties in a synchronized and efficient manner. These measures prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of

permanent establishment status and neutralize the effects of hybrid mismatch arrangements.

Research Problem:

Tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax (BEPS).

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties. Although some of the schemes used are illegal, most are not. This undermines the fairness and integrity of tax systems because businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level. Moreover, when taxpayers see multinational corporations legally avoiding income tax, it undermines voluntary compliance by all taxpayers.

Keywords: Base Erosion And Profit Shifting; Multilateral Convention; Tax Treaty; Organization For Economic Co-Operation And Development; G20 Countries.

Introduction:

Base Erosion and Profit Shifting (BEPS) refers to strategies employed by multinational corporations to shift profits from high-tax jurisdictions to low-tax or no-tax jurisdictions, thereby eroding the tax base of countries. This practice can significantly impact national economies, leading to reduced tax revenues, increased inequality, and weakened public services.

As countries strive to protect their tax bases, BEPS poses challenges for policymakers, who must balance attracting foreign investment with ensuring fair tax contributions. The OECD's BEPS Action Plan seeks to address these issues by providing guidelines to combat tax avoidance, promoting transparency, and encouraging cooperation among nations.

The economic consequences of BEPS can be profound, particularly for developing countries that rely heavily on tax revenue for public goods and infrastructure. By curbing BEPS, countries aim to create a more equitable tax system that supports sustainable economic growth.

Base Erosion and Profit Shifting (BEPS) is discovered through a combination of methods, including:

1. Data Analysis and Reporting: Governments and tax authorities analyze financial data from multinational corporations, often using reports mandated by regulations such as the OECD's Country-by-Country Reporting (CbCR). These reports provide detailed information on a company's global operations, revenues, and taxes paid in each jurisdiction.
2. Transfer Pricing Audits: Tax authorities conduct audits focusing on transfer pricing practices, which involve setting prices for transactions between related entities in different countries. Discrepancies in pricing can indicate profit shifting.

3. Intelligence Sharing: Increased cooperation among countries through frameworks like the OECD facilitates the sharing of information and best practices. This helps identify patterns of tax avoidance across jurisdictions.

4. Public Disclosure: Some jurisdictions require companies to publicly disclose their tax strategies and contributions, making it easier for stakeholders to spot unusual patterns or aggressive tax planning.

5. Whistleblower Reports: Individuals with insider knowledge may report suspicious activities, prompting investigations into potential BEPS strategies.

6. Research and Analysis: Academic and non-governmental organizations conduct studies to highlight trends in corporate tax practices and the effects of BEPS, bringing attention to the issue.

These methods collectively help tax authorities identify and address BEPS activities, promoting fairer taxation practices.

<u>Base Erosion and Profit Shifting (BEPS) presents several significant problems and issues for countries:</u>

1. Reduced Tax Revenue: BEPS strategies enable multinational corporations to shift profits to low-tax jurisdictions, resulting in substantial losses in tax revenue for higher-tax countries. This can impact public services, infrastructure, and social programs.

2. Increased Inequality: The erosion of tax bases often disproportionately affects low- and middle-income countries, which may rely heavily on corporate taxes. This can exacerbate income inequality and limit resources for essential services.

3. Distorted Competition: BEPS creates an uneven playing field where smaller businesses or domestic firms that cannot engage in aggressive tax planning face higher effective tax rates, leading to market distortions.

4. Complex Regulatory Environment: Countries may implement complex tax rules and regulations in response to BEPS, increasing compliance costs for businesses and complicating the tax landscape.
5. Tax Avoidance Perception: The prevalence of BEPS can undermine public trust in the tax system, leading to increased scrutiny and calls for reform. This can also create reputational risks for companies engaged in such practices.
6. Resource Allocation: Governments may need to allocate more resources to tax administration and enforcement to combat BEPS, diverting funds from other critical areas.
7. International Tensions: Competition for attracting foreign investment can lead to tax wars, where countries lower rates unsustainably, further eroding their tax bases and potentially leading to trade disputes.
8. Legislative Challenges: Countries often struggle to coordinate tax policies internationally to effectively tackle BEPS, leading to gaps in regulations and enforcement.

These issues highlight the urgent need for international cooperation and comprehensive strategies to address BEPS effectively.

Chapter 1 – Base Erosion and profit shifting

<u>Introduction about base erosion and profit shifting:</u>

Base erosion and profit shifting (BEPS) is a term used to describe a range of tax planning strategies used by multinational corporations (MNCs) to minimize their tax liabilities in various jurisdictions around the world. The strategies involve shifting profits to low-tax jurisdictions, while minimizing taxable income in high-tax jurisdictions, resulting in a reduction of the overall tax burden.

Base erosion and profit shifting refers to the tax planning strategies that are used by the multinational companies to exploit gaps and differences between tax rules of different jurisdictions, in other meaning base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties.

BEPS has become a growing concern for governments and policymakers in recent years, as the loss of tax revenue from MNCs has a significant impact on public finances, particularly in developing countries. The Organization for Economic Co-operation and Development (OECD) estimates that countries around the world lose up to $240 billion in tax revenue each year due to BEPS[1].

To address this issue, the OECD, in collaboration with the G20 countries, launched a comprehensive BEPS action plan in 2013, which includes 15 specific actions aimed at closing tax loopholes and improving transparency in international tax matters. The BEPS initiative has been widely adopted by countries around the world, with over 135 countries and jurisdictions participating in the BEPS project[2].

The illegal practices exploit ambiguity from the interaction of different tax rules and double Tax Treaties (DTSs). These base erosion and profit shifting avoidance strategies enable multinational corporations MNCs to minimize their tax burden, eroding government revenue bases by strategically transferring profits.

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1 https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html

2 https://www.idos-research.de/uploads/media/DP_18.2017.pdf

BEPS schemes lead to "double non-taxation" outcomes when income is not taxed at all or at minimal rates failing to reflect the firm's economic reality at the jurisdictional site of created value[1].

The BEPS actions cover a wide range of issues, including transfer pricing, permanent establishment rules, hybrid mismatches, controlled foreign company rules, and dispute resolution. The goal of the BEPS initiative is to ensure that MNCs pay their fair share of taxes, in a transparent and consistent manner, and to prevent the erosion of the tax base in high-tax jurisdictions.

What is Base Erosion?

Base erosion refers to a tax planning strategy used by multinational corporations (MNCs) to reduce their tax liabilities by shifting profits from high-tax jurisdictions to low-tax jurisdictions. The term "base erosion" refers to the erosion or reduction of the tax base in the high-tax jurisdiction, as a result of the MNCs' activities in the low-tax jurisdiction[2].

Base erosion is the use of financial plans, measures and tax planning to reduce the size of the company's profits that are taxable in a country. It is often achieved by structuring income to have more favourable tax treatment or by finding ways to write off certain expenditure against taxable income. This has the effect of reducing a company's tax bill below what it should be expected to pay.

The result of base erosion is a reduction in the amount of tax revenue that high-tax jurisdictions are able to collect from MNCs.

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1 Base Erosion and Profit Shifting: The New Framework of International Taxation, October 2020Journal of Business Management and Information Systems

2 OECD Policy Brief – "Taxing Multinational Enterprises: Base Erosion and Profit Shifting (BEPS)", available at http://www.oecd.org/ctp/policy-brief-beps-2015.pdf

This has a significant impact on public finances, particularly in developing countries, where the loss of tax revenue can have a serious impact on government budgets and social programs.[1]

What is profit shifting?

Profit shifting is a tax planning strategy used by multinational corporations (MNCs) to shift profits from high-tax jurisdictions to low-tax jurisdictions in order to reduce their overall tax liabilities. This is done by taking advantage of differences in tax rules and rates between countries.

MNCs engage in profit shifting through various tax planning strategies such as transfer pricing, where related entities within the same corporate group manipulate the prices of goods and services to shift profits to low-tax jurisdictions; and the use of tax havens, which offer favourable tax rates and minimal regulation.

Profit shifting is done by making payments to other companies in order to move profits from jurisdictions with high-tax to low-tax regimes. This helps to increase the total profits available to the shareholders. Often, these intra-group payments (known as Transfer pricing) take the form of royalties and interest payments, as these expenses can be deducted from pre-tax profits. Another advantage of these payment types is that there are some jurisdictions have lower tax rates on these kinds of income such as Luxembourg, for example Luxembourg has a very favourable regime on royalty income.[2]

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1 Base Erosion and Profit Shifting Article – pwc (page1) – https://www.pwc.com/m1/en/media-centre/2019/articles/base-erosion-and-profit-shifting-beps.pdf

2 https://www.pwc.com/gx/en/services/tax/tax-policy-administration/beps.html

Effects and impacts of base erosion and profit shifting:

BEPS results in tax not being paid in the jurisdiction where economic activity occurs – eroding the revenue bases of countries and undermining the fairness and integrity of their tax systems. While some of the plans used are illegal, most are not. This undermines the fairness and integrity of the tax system, as companies operating across borders can use BEPS to gain a competitive advantage over companies operating domestically. In addition, when taxpayers see multinational corporations legally avoiding income taxes, it undermines the voluntary compliance of all taxpayers. [1]

Base Erosion and Profit Shifting (BEPS) will be more profitable for multinational companies than domestic companies in terms of competitive advantage. Indeed, the opportunities presented by base erosion and profit shifting (BEPS) can lead to greater tax savings with high returns[2].

Inefficiency in resource allocation by wrong superficial investment decisions towards businesses that have low returns before tax, but have high returns after tax.

Base erosion and profit shifting (BEPS) practices will cause taxpayers not to comply with their tax obligations when they see multinational companies evading their tax obligations.

The effects of base erosion and profit shifting (BEPS) can be significant, particularly for countries that rely heavily on corporate tax revenue. Some of the main effects of BEPS are:

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1 Estimating fiscal effects of base erosion and profit shifting Article (page 4-9) - UNCTAD

2 OECD, OECD/G20 Inclusive Framework on BEPS Progress report July 2019 – July 2020, at https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-on-beps-progress-report-july-2019-july-2020.pdf.

1. Reduced tax revenues: BEPS results in a reduction of tax revenues for high-tax jurisdictions, as multinational corporations (MNCs) shift their profits to low-tax jurisdictions. This can have a significant impact on public finances, particularly in developing countries, where the loss of tax revenue can have a serious impact on government budgets and social programs.
2. Uneven playing field: BEPS creates an uneven playing field for businesses, where MNCs with the resources to engage in tax planning strategies are able to reduce their tax liabilities, while smaller businesses that cannot engage in such strategies are at a disadvantage.
3. Undermining tax systems: BEPS undermines the integrity of national tax systems, as MNCs manipulate tax rules to their advantage, resulting in an erosion of public trust in the fairness of the tax system.
4. Distorting economic activity: BEPS can distort economic activity, as MNCs may prioritize tax considerations over other factors such as investment and employment opportunities. This can result in suboptimal allocation of resources and reduced economic growth.

Who uses these techniques?

Base erosion and profit shifting (BEPS) techniques are typically used by multinational companies with operations in multiple countries. These companies may use various strategies to shift profits to jurisdictions with lower tax rates or to take advantage of tax loopholes in different countries, resulting in a reduction of their overall tax liabilities.

Some of the common BEPS techniques used by multinational companies include transfer pricing manipulation, use of tax havens, treaty shopping, artificial allocation of risks and capital,

and the abuse of hybrid entities and instruments. These techniques are often employed by companies in the technology, pharmaceutical, and finance industries, among others.

While BEPS techniques are not necessarily illegal, they can be viewed as unfair and create an uneven playing field for companies that do pay their fair share of taxes. The BEPS project aims to address these issues by introducing measures to close loopholes and increase transparency, making it more difficult for companies to use BEPS techniques to reduce their tax liabilities[1].

There have been several high-profile cases where companies have been accused of using BEPS techniques. Here are a few examples:

1- Apple: In 2016, the European Union (EU) ordered Apple to pay €13 billion in back taxes to Ireland, alleging that the company had received illegal tax benefits from the Irish government. [2] The EU claimed that Apple had used transfer pricing and other BEPS techniques to shift profits from its European operations to Ireland, where it had negotiated a lower tax rate. [3]

2- Google: In 2019, Google agreed to pay €465 million in back taxes to France after the country's tax authorities accused the company of using BEPS techniques to reduce its tax bill in the country. French authorities claimed that Google had underreported its revenue in France and transferred profits to Ireland, where it had a lower tax rate.[4]

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1 The reports, along with summaries and other less technical materials, are on the Organization for Economic Cooperation and Development (OECD) website at http://www.oecd.org/tax/beps/beps-actions.htm.

2 Apple using BEPS techniques article - KPMG

3 https://news.bloombergtax.com/daily-tax-report-international/insight-the-apple-case-where-are-we-now

4 Identification of BEPS rate article (page 2 – 3) – AK journals

3- Starbucks: In 2015, the European Commission ordered Starbucks to pay up to €30 million in back taxes to the Netherlands, alleging that the company had received illegal tax benefits from the Dutch government. The EU claimed that Starbucks had used transfer pricing and other BEPS techniques to shift profits from its European operations to the Netherlands, where it had negotiated a lower tax rate.[1]

4- Amazon: In 2021, Amazon was accused of using BEPS techniques to reduce its tax bill in Europe by shifting profits to Luxembourg, where it had negotiated a lower tax rate. The company is facing a potential tax bill of up to €1.1 billion in back taxes and penalties from the French tax authorities.[2]

<u>What are the techniques used in base erosion and profit shifting?</u>

- **Trademark and technology licensing/transfer pricing:** Manage the group's trademarks, designs, and patents through an entity that applies a reduced tax rate on intellectual property, which then charges the group companies royalties for using the trademarks. Since royalties are often affected by withholding taxes, it is important to prioritize the intellectual property company's tax treaty relationship with the countries where the other corporation companies are located. Along with an 80% reduction in the usual tax rate on intellectual property royalties, this is why Luxembourg is so popular as an IP holding company in Europe;

1 https://www.econstor.eu/bitstream/10419/187428/1/1041095848.pdf

2 Tilburg University Thesis on BEPS by Zoi Vangeli article chapter 2 (page 6-8)

- **Thin capitalization:** By setting up subsidiaries with minimal share capital, groups can use a financing arm to fund the new company’s operations with debt. This substantial debt generates interest, which is treated differently in certain jurisdictions, and can therefore reduce the group's overall tax bill if structured correctly.
- **Hybrid mismatch arrangements:** Tax regulations that vary from country to country can sometimes give rise to unintended effects such as no double taxation that companies can exploit to reduce their tax burden. This applies primarily to the national treatment of certain instruments in such a way that they are treated in the paying country as tax-deductible debt, but seen in the receiving country as a tax-exempt dividend;
- **Putting assets into entities without substance:** Some countries are adopting preferential tax regimes as a way to compete with businesses. However, this is only useful if large companies start to establish themselves in the country; on the other hand, this form of tax competition simply erodes the tax base of the country where the activity takes place. Existing rules often allow for business owners to set up paper companies to take advantage of preferential regimes such as patent boxes or Luxembourg’s 80% IP holding tax education.

Actions done by the Organization for Economic Cooperation and Development (OECD) to address base erosion and profit shifting:

The Organization for Economic Cooperation and Development (OECD) together with the G20 created the BEPS actions plan for the concerns of many countries due to the problem of reducing state revenue from taxes due to aggressive tax planning carried out

by multinational companies and the BEPS actions plan discusses 4 main principles:

a) Build a corporate income tax internationally consistent by neutralizing the effect and the impact of different tax rates, strengthening and improving the regulatory supervision of the foreign companies, reducing the tax revenue reductions and fighting adverse tax practices. [1]
b) Increasing the advantages of the implementation of international tax standards, such as preventing the abuse of international tax treaties, avoiding and preventing the falsification of Permanent Establishment status.
c) Guaranteeing transparency in line with effort to support and strengthen legal certainty and predictability.
d) Accelerate the implementation process of the BEPS actions plan and to take tangible steps.[2]

Chapter 2 – Multilateral Instrument

MLI Convention

What is the MLI?

The MLI stands for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument). A group of more than 100 countries and jurisdictions, including all members of the OECD and the G20[3], has developed the multilateral instrument to address

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1 Tax planning in multinational companies article (page 5) – Eco papers
2 https://www.healyconsultants.com/base-erosion-and-profit-shifting/
3 OECD members are listed at http://www.oecd.org/about/membersandpartners/. The 35 members include most countries in Europe, some countries in North America, and Australia, Japan, The Republic of Korea, New Zealand, Israel, Iceland, Chile, and Turkey. The G-20 include Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, The Republic of Korea,

aggressive tax-reduction measures and structures. The MLI aims to preserve the role of bilateral income tax agreements in eliminating double taxation worldwide while countering opportunities to use treaties to eliminate all taxes or reduce tax rates to aggressively low levels.

The MLI implements tax treaty related measures to prevent treaty abuse, improve dispute resolution, prevent avoidance of permanent establishment status and address other hybrid mismatch arrangements. The MLI is not a standalone treaty, but rather modifies existing bilateral tax treaties. Over 1,100 tax treaties are expected to be modified by the MLI.

MLI does not function in the same way as an amending protocol to a single existing tax treaty. Instead, the MLI is applied alongside existing bilateral tax treaties, modifying their application in order to implement the tax treaty-related BEPS measures. It also enables countries to go through only one ratification procedure in their parliament in order to modify their whole treaty network rather than seek separate ratification of amendments for each bilateral tax treaty.

The MLI which is a Convention allows for different forms of flexibility through a system of reservations and notifications of choices. The MLI provides flexibility for a jurisdiction to determine which of its double tax agreements it would like to amend using the MLI. The MLI will apply only to a double tax agreements that has been specifically listed by all Contracting Jurisdictions to the double tax agreements[1]. Such agreements are

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Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union.

1 International tax rules are discussed in more detail in CRS Report RL34115, Reform of U.S. International Taxation: Alternatives, by Jane G.

referred to as “Covered Tax Agreements” (CTAs) in the MLI. A party to a CTA is referred to as a “Contracting Jurisdiction”.

How does the MLI works?

The Multilateral Instrument (MLI) works by providing a standardized mechanism for countries to amend their existing bilateral tax treaties to incorporate measures to prevent Base Erosion and Profit Shifting (BEPS). The MLI operates on a "multilateral" basis, meaning that it allows countries to adopt measures developed by the OECD as part of the BEPS project in a coordinated and efficient manner.

Under the MLI, countries can choose to adopt a range of measures to modify their existing tax treaties, including:

1. Inserting anti-abuse provisions to prevent treaty shopping and other forms of treaty abuse;
2. Strengthening the rules governing the taxation of permanent establishments;
3. Introducing new provisions to address hybrid mismatch arrangements;
4. Improving the mutual agreement procedure for resolving disputes between tax authorities; and
5. Adding other measures to prevent BEPS.

The MLI provides a standardized process for countries to choose which of these measures they want to adopt, and how they will be implemented. Countries must first sign the MLI and then submit a list of their existing tax treaties that they wish to modify using the MLI. Other countries that have also signed the MLI can then choose to adopt the same measures for their own tax treaties with the country in question.

Gravelle, and CRS Report R42624, Moving to a Territorial Income Tax: Options and Challenges, by Jane G. Gravelle.

The MLI is designed to operate alongside existing bilateral tax treaties, rather than replacing them entirely.

The MLI supplements and modifies existing income tax treaties (though it is not a self-standing income tax treaty or an amending protocol), and it modifies the application of thousands of tax treaties to eliminate double taxation. In this way, governments do not need to bilaterally negotiate separate treaties.

The MLI applies to "Covered Tax Agreements" (CTAs). At the beginning each country specifies which of its bilateral income tax agreements would be covered by the MLI (i.e., which should be designated as "CTAs"). Then, each country designates the provisions of the MLI it will adopt, some provisions are known as the minimum standards and those provisions must be adopted by each country, while the others provisions are not mandatory to be applied. If both parties to a bilateral tax agreement designate it as such, it becomes a covered tax agreement. This means various articles of the treaty will be impacted, depending on the countries' mutual acceptance of, or reservations against, specific MLI provisions.

Recognizing the complexity of designing a general instrument that applies to the covered tax agreements and to the specific provisions included in bilateral tax treaties, the MLI provides flexibility for Contracting Jurisdictions to implement (parts of) the MLI based on their needs. Many of the provisions of the MLI overlap with provisions found in covered tax agreements. Where the provisions of the MLI conflict with existing provisions covering the same subject matter, this conflict is addressed through one or more compatibility clauses which may, for example, describe the existing provisions which the MLI is intended to supersede, as well as the effect on covered tax agreements that do not contain a provision of the same type.

Scope of MLI Convention:

The scope of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is to modify existing bilateral tax treaties to incorporate the minimum standards agreed upon in the Base Erosion and Profit Shifting (BEPS) Project, as well as to allow for the optional adoption of additional provisions to prevent treaty abuse. As of March 2023, over 100 countries have signed the MLI and committed to implementing its provisions in their existing tax treaties. The MLI covers a wide range of tax treaty provisions, including those related to permanent establishments, dividends, interest, royalties, capital gains, and mutual agreement procedures. Its aim is to address treaty abuse and improve the coherence of the international tax system.

- **Difference in the tax treatment of financial instrument in more than one jurisdiction (Hybrid Mismatches):**

Hybrid mismatches refer to situations where there is a difference in the tax treatment of a financial instrument or entity in two or more jurisdictions, leading to either double non-taxation or a tax deduction without corresponding taxation in another jurisdiction. Hybrid mismatches can arise due to differences in tax laws between countries or by taking advantage of the different tax classifications of entities or instruments in different jurisdictions.

The MLI (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) addresses hybrid mismatches by providing measures to eliminate the tax benefits arising from such mismatches. These measures include changes to tax treaties that prevent the exploitation of differences in tax laws and classifications across jurisdictions. The

MLI also provides for the exchange of information between tax authorities to ensure effective implementation of the measures.

The MLI also modifies the rules regarding treaty residency of an entity that is a resident of more than one jurisdiction.

Transparent entities (optional article): Article 3 refers to combined mismatches caused by entities such as partnerships that one or both Contracting Jurisdictions consider to be fully or partially transparent for tax purposes. For the purposes of Article 3, income received by or through a transparent entity shall be deemed to be income of a resident of the Contracting Jurisdiction, to the extent that the income is treated as that of the resident for purposes of taxation by that Contracting Jurisdiction.

Person residency in more than one contracting jurisdiction (Dual resident entities) - optional article: Article 4 modifies the rules for the determining the treaty residency of a person other than an individual that is a resident of more than one Contracting Jurisdiction (dual resident entity). Under this provision, treaty residency of a dual resident entity shall be determined by a mutual agreement procedure between Contracting Jurisdictions.

Application of methods for elimination of double taxation (optional article): Article 5 includes three options for Contracting Jurisdictions for the methods of eliminating double taxation that will ensure that countries relieve double taxation by crediting foreign tax against domestic tax rather than by exempting foreign income.

- **Taxpayer exploits gaps, inconsistencies or ambiguities in tax treaties to obtain unintended tax benefits (Treaty Abuse):**

The Principal Purposes Test is a new anti-abuse rule based on the principal purposes of transactions or arrangements and seeks to modify arrangements put in place with the principal purpose of

obtaining the benefits of a tax treaty. Under this test, if one of the principal purposes of a transaction or arrangement is to obtain treaty benefits, these benefits would be denied unless it is established that granting the benefits is in accordance with the purpose of the provisions in the treaty. This approach is similar to domestic anti-abuse and anti-avoidance rules.

Purpose of a covered tax agreement CTA (mandatory article): Article 6 contains the proposal described in the Action 6 final report to change the preamble language of a CTA to ensure compliance with one of the requirements of the minimum standard consisting of expressing the common intention to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. Article 6 also includes optional wording that may be added to the preamble of a CTA referring to the desire to develop an economic relationship or to enhance cooperation in tax matters. Article 6 of the MLI applies "in place of or in the absence of" an existing provision. Article 6 is a provision required to meet a minimum standard and therefore jurisdictions cannot opt-out of this article, unless they reserve the right for this article not to apply to its CTAs that already contain preamble language within the scope of the reservation. [1]

Prevention of Treaty Abuse (mandatory article): Article 7 contains the provisions to be included in a CTA to prevent treaty abuse. As concluded in the Action 6 final report, the prevention of treaty abuse should be addressed in one of the following ways: (i) a combined approach consisting of a Limitation on Benefits

1 Base Erosion and Profit Shifting key considerations article page (7-10) – KPMG - https://assets.kpmg.com/content/dam/kpmg/pdf/2015/12/fs-tax-real-estate-beps-whitepaper-v5-web.pdf

(LOB) provision and a principal purpose test (PPT); (ii) a PPT alone; or (iii) a LOB provision, supplemented by specific rules targeting conduit financing arrangements. With respect to the LOB provision, the Action 6 final report provided for the option of including a detailed or a simplified version. Given that a PPT is the only way that a Contracting Jurisdiction can satisfy the minimum standard on its own, it is presented as the default option in Article 7. Contracting Jurisdictions are allowed to supplement the PPT by electing to also apply a simplified LOB provision. Specifically, Article 7 articulates the PPT which denies treaty benefits when considering all relevant facts and circumstances, obtaining that benefit is one of the principal purposes for entering into a specific transaction or arrangement that resulted directly or indirectly in that benefit, unless if granting that benefit is not contrary to the object and purpose of the relevant provisions of the CTA. [1]

- **Avoidance of Permanent Establishment Status:**

Artificial avoidance of PE status through commissionaire arrangements and similar strategies (optional article): Article 12 explains how changes to the wording of Article 5 of the OECD Model Tax Convention could be used to address artificial evasion of PE through commission arrangements and similar strategies may be included in the CTAs designated by the contracting jurisdictions. In Particular:

- In Article 12(1), the concept of Dependant Agent PE is wider so that it includes situations where someone is performing in a Contracting Jurisdiction on behalf of an enterprise and, in doing so, habitually concludes contracts,

1 https://www.ato.gov.au/business/international-tax-for-business/in-detail/base-erosion-and-profit-shifting/

or habitually acting the main role leading for the conclusion of contracts that are regularly concluded without material amendment by the enterprise.

Artificial avoidance of permanent establishments status through the specific activity exemptions (optional article): Article 13 targets the artificial avoidance of permanent establishments status by the specific activity exemptions like warehousing or purchasing goods. Only actual preparatory or auxiliary operations are excluded from the definition permanent establishment. Moreover, related entities will be prevented from fragmenting their operations in order to fit for this exclusion.

Splitting-up of Contracts: Splitting up of contracts refers to a practice sometimes employed by multinational corporations to avoid creating a "permanent establishment" (PE) in a particular jurisdiction. A PE is a fixed place of business through which the business of an enterprise is wholly or partly carried on, and can trigger tax obligations in the jurisdiction where it is located.

By splitting up contracts, a company can divide a large contract into several smaller ones, each one with a value that is below the threshold that would trigger a PE in the jurisdiction. This can allow the company to avoid paying taxes in that jurisdiction, even though it may be doing business there.

Mutual Agreement Procedure (mandatory article): The Mutual Agreement Procedure (MAP) is a dispute resolution mechanism included in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MAP is a process by which two or more countries can resolve disputes that arise under tax treaties.

Under the MLI, the MAP process is designed to be faster and more efficient than traditional dispute resolution mechanisms. It

involves the tax authorities of the countries involved in the dispute working together to reach a resolution.

The MAP process is initiated when one of the parties to the dispute submits a request for assistance to the competent authority of the other party. The competent authorities then engage in discussions to try to reach a resolution. If they are unable to do so, the matter may be referred to an arbitration panel for a final decision.

The MAP is an important part of the MLI because it helps to ensure that tax treaty disputes are resolved in a timely and efficient manner.

The competent authority shall endeavour to settle the case by mutual agreement with the other competent authority, this provides the taxpayers with a better and more effective tax treaty-based dispute resolution process. [1]

Corresponding Adjustments (best practice article):

Corresponding adjustments refer to the adjustments that a tax authority makes to the taxable income of a taxpayer in one jurisdiction to ensure that the amount of income is appropriately reflected in another jurisdiction where the taxpayer has a related party transaction.

Under the MLI convention, countries agree to implement corresponding adjustments to eliminate the double taxation of profits or the double non-taxation of profits. Corresponding adjustments are intended to ensure that profits are taxed where they should be taxed, and that they are not taxed twice. [2]

The corresponding adjustment provision in the MLI provides a mechanism for countries to make such adjustments, which may

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1 https://pro.bloombergtax.com/brief/oecd-beps-and-the-multilateral-instrument/

2 https://www.mra.mu/download/GNno180of2019IncomeTaxReg-BEPS.pdf

include the addition or subtraction of income, deductions, credits, or other items on a tax return. This provision ensures that the tax paid in one jurisdiction is taken into account when determining the tax liability in another jurisdiction. [1]

Arbitration (optional article): Articles 18-26, Mandatory binding arbitration of the MLI, enable the countries to include mandatory binding treaty arbitration MBTA in their Covered Tax Agreements in accordance with the special procedures provided by the MLI. Arbitration applies only between jurisdictions that expresses their consent to choose to apply arbitration with respect to their tax treaties. The mandatory binding treaty arbitration provision will apply to cases of taxation opposite to the relevant covered tax agreement, unless a country has made a reservation specifying a more limited scope. [2]

The MLI offers flexibility for jurisdictions to bilaterally agree on the application of the MBTA, including the form of arbitration. However, the default rules defined in the MLI will apply if jurisdictions do not conclude such an agreement before a case materializes that is eligible for arbitration. For those jurisdictions that choose to implement MBTA through the MLI, the MLI provisions would apply to all CTAs that do not have such a provision, or instead of existing provisions that provide for MBTA. Nevertheless, jurisdictions may reserve the right not to apply the MBTA provision of the MLI to some or all of its CTAs that already have a MBTA provision. [3]

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1 Mauritius Revenue Authority MLI research (page 8-10) – https://www.mra.mu/download/MLI.pdf

2 MLI convention article PDF (page 1-5) – zatca.sa

3 https://www.oecd.org/ctp/treaties/egypt-deposits-its-instrument-of-ratification-for-the-multilateral-beps-convention.htm#:~:text=The%20MLI%20will%20enter%20into,ratified%2C%20accepted%20or%20approved%20it.

Countries that ratified MLI convention:

Egypt

Egypt signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017 in Paris. The MLI aims to provide a more efficient way to implement measures aimed at preventing tax avoidance and improve dispute resolution mechanisms.

Egypt deposited its instrument of ratification with the OECD on 6 August 2020, becoming the 96th jurisdiction to ratify the MLI. The MLI will entered into force for Egypt on 1 December 2020.

Egypt has listed 55 of its tax treaties to be covered by the MLI, including treaties with Austria, Belgium, China, France, Germany, Italy, Japan, the Netherlands, Russia, South Korea, Spain, Switzerland, and the United Kingdom.

Through the MLI, Egypt has implemented several measures aimed at preventing base erosion and profit shifting, including the minimum standards on preventing treaty abuse, improving dispute resolution mechanisms, and mutual agreement procedures. The MLI is expected to enhance the effectiveness of Egypt's tax treaties and contribute to the country's efforts to combat tax avoidance and evasion.[1]

Impact of Egypt's ratification of MLI convention:

The ratification of Egypt to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is expected to have significant impacts on the country's tax treaty network and international tax practices.

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1 Egypt's MLI ratification decision mondaq article – https://www.mondaq.com/tax-authorities/1064028/multilateral-instrument-mli-ratification--decision-no-446-of-2020

Egypt's ratification of the MLI convention will have several effects. Firstly, it will enable Egypt to implement the BEPS minimum standards and to modify its existing tax treaties to comply with these standards. This will help prevent base erosion and profit shifting by multinational companies operating in Egypt.

Secondly, ratification will facilitate dispute resolution between Egypt and other countries that have also ratified the MLI convention. This is because the convention includes provisions for mutual agreement procedures and the resolution of disputes related to the interpretation and application of tax treaties.

Thirdly, ratification will increase Egypt's participation in the international tax community and improve its reputation as a responsible member of the global tax system. This could attract foreign investment and improve Egypt's overall economic outlook.

One of the main effects of the ratification is that it will allow Egypt to implement the minimum standards of the MLI, including the adoption of the principal purpose test (PPT) and the inclusion of a mandatory binding arbitration clause in its tax treaties. This will enhance the ability of Egypt to prevent treaty abuse and resolve disputes in a timely and efficient manner.

Moreover, the ratification will also enable Egypt to modify its existing tax treaties to align with the MLI provisions, which may result in changes to the tax treaty network and the tax treatment of cross-border transactions. This could affect both foreign and domestic investors, as well as impact the competitiveness of Egypt as an investment destination.

The MLI convention enables countries to modify their existing bilateral tax treaties to incorporate the minimum standards of the BEPS project. This modification will impact the application of the tax treaty between Egypt and other countries, as the provisions of

the MLI convention will override the existing provisions of the tax treaty in case of any conflict. It is worth noting that the MLI convention does not create new tax obligations but rather modifies existing treaties to combat BEPS.

The ratification of Egypt to the MLI is a positive step towards the implementation of international tax standards and the prevention of base erosion and profit shifting. It will enhance the transparency and integrity of the tax system in Egypt and improve the country's position in the global tax landscape. Moreover, the ratification of Egypt to the MLI convention is expected to have a positive impact on the international tax environment and improve Egypt's tax system by incorporating BEPS measures in its tax treaties with other countries.

United Arab Emirates

The United Arab Emirates (UAE) signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 24 September 2018 and ratified it on 27 May 2020. The MLI is an initiative under the Base Erosion and Profit Shifting (BEPS) project led by the Organisation for Economic Co-operation and Development (OECD) to prevent multinational companies from artificially shifting profits to low-tax jurisdictions to avoid paying taxes.

By ratifying the MLI, the UAE has committed to implementing minimum standards relating to the prevention of treaty abuse, mutual agreement procedures, and dispute resolution. In addition, the UAE has opted to apply certain provisions of the MLI to its existing tax treaties through a process of bilateral negotiations with other jurisdictions that have also ratified the MLI. The MLI provides a flexible framework for modifying bilateral tax treaties without requiring each treaty to be renegotiated individually, which can be time-consuming and complex.

The UAE's ratification of the MLI demonstrates its commitment to implementing international tax standards and combating base erosion and profit shifting. It also enhances the UAE's position as a transparent and cooperative jurisdiction for doing business, which is essential in attracting foreign investment and improving the country's economic competitiveness.[1]

UAE's MLI positions:

Many of the MLI provisions allow jurisdictions to opt out of their effect. However, some provisions, the minimum standards, must be applied by all signatories of the MLI. These include:

- Adoption of a new preamble that updates the objectives of tax treaties to state that a treaty should not be used to "create opportunities for non-taxation or reduced taxation through tax evasion or avoidance" (Article 6 of the MLI)
- Prevention of treaty abuse by including the principle purpose test (PPT) clause or the limitation of benefits (LOB) clause (Article 7 of the MLI)
- Inclusion of additional wording in the treaty to improve the dispute resolution process by allowing taxpayers to initiate the Mutual Agreement Procedure (MAP) to resolve treaty conflicts (Article 16 of the MLI)

The UAE published its official reservations and notifications to the MLI, substantially confirming the announced intention to implement only the BEPS minimum standards. Thus, the effect of the MLI on the UAE treaty network should be limited to these provisions.

1 UAE MLI ratification article – EY

Prevention of tax treaty abuse: Principal Purpose of Transactions (PPT) and Limitation of benefits (LOB):

The most significant change to the UAE tax treaties will be the inclusion of a default PPT clause in its CTAs.

The PPT is based on the principal purpose of transactions or arrangements. If it is reasonable to conclude, having regard to all relevant facts and circumstances, that one of the principal purposes of that transaction or arrangement is to obtain treaty benefits, these benefits may be denied unless it is established that granting these benefits is in accordance with the object and purpose of the provisions of the treaty.

Implications:

The UAE Government's decision to join the Inclusive Framework and commit to implementing the BEPS minimum standards will help to strengthen the UAE's business and investment reputation in the Middle East. Ratification of the MLI is an important step in the ongoing BEPS process.

Businesses operating in the UAE should review the potential changes to be introduced by the MLI in their tax treaty application and determine whether new business models should be adopted.

Going forward, businesses should also monitor how broader BEPS concerns are addressed by other jurisdictions. The principal purpose of business structures should also be aligned with the functional profile of the legal entities claiming the tax treaty benefits. Therefore, the link to a group's transfer pricing policies and documentation should be considered, especially, since the UAE has recently implemented the Country-by-Country Reporting rules. Lastly, local substance requirements recently implemented by several low-tax jurisdictions, including the UAE, should also be considered.

The impact of ratifying UAE the MLI convention:

The UAE's ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) has significant implications for its tax treaty network. The MLI allows countries to implement changes to their existing tax treaties in a more efficient and coordinated manner, without the need for lengthy bilateral negotiations.

By ratifying the MLI, the UAE has committed to implementing measures to prevent base erosion and profit shifting (BEPS) in its tax treaties with other countries that are also parties to the MLI. These measures include provisions related to treaty abuse, permanent establishment, dispute resolution, and hybrid mismatches, among others.

The MLI will have a significant impact on the UAE's tax treaty network, which currently consists of over 100 tax treaties. The implementation of the MLI measures will require changes to these existing treaties, which will need to be coordinated with other MLI signatories.

Finally, the UAE's ratification of the MLI demonstrates its commitment to combating BEPS and aligning its tax treaty network with international standards. It also provides a more efficient mechanism for implementing these changes compared to lengthy bilateral negotiations.

The ratification of UAE to the MLI Convention will affect the tax treaties signed by UAE. The MLI Convention is designed to modify existing tax treaties in order to implement the minimum standards and other BEPS-related measures. Once a country ratifies the MLI Convention, its provisions will modify its existing tax treaties with other signatory countries, including the UAE's tax treaties. This means that the MLI Convention will have an impact on how the UAE's tax treaties are applied and enforced, and it will

also affect the tax treatment of cross-border transactions between the UAE and other signatory countries.[1]

Chapter 3 – Base Erosion and Profit Shifting

BEPS Action plan

Introduction:

Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies used by multinational companies to artificially shift profits from high-tax countries to low-tax countries, thereby eroding the tax base of the high-tax countries. The BEPS project is a global initiative launched by the Organisation for Economic Co-operation and Development (OECD) and the G20 countries to address this issue and ensure that profits are taxed where economic activities generating the profits are performed and where value is created. The BEPS project resulted in the development of a comprehensive set of 15 action items aimed at reforming the international tax system to prevent base erosion and profit shifting. The BEPS actions cover a wide range of topics, including transfer pricing, the taxation of the digital economy, harmful tax practices, and dispute resolution. The ultimate goal of the BEPS project is to create a fairer and more effective international tax system that promotes economic growth, reduces tax avoidance, and enhances the integrity of the tax system

Action Plan:

Fundamental changes are needed to prevent double non-taxation effectively, besides the cases and situations of no or low taxation associated with practices that artificially separate taxable income from the practices that produce it.

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1 https://www.ey.com/en_gl/tax-alerts/uae-ratifies-multilateral-convention-to-implement-tax-treaty-related-measures

New international standards must be designed to ensure the coherence of corporate income taxation at the international level. BEPS problems may arise directly from the existence of loopholes, as well as gaps, frictions or mismatches in the interaction of countries' domestic tax laws. These types of issues generally have not been dealt with by OECD standards or bilateral treaty provisions. There is a need to complement existing standards that are made to prevent double taxation with methods that don't allow double non-taxation in areas already not covered by international standards and that address cases of no or low taxation associated with practices that artificially separate taxable income from the activities that generate it. Moreover, governments shall continue to work together to stop and tackle harmful tax practices and aggressive tax strategies.

The BEPS project consists of 15 specific actions aimed at strengthening international tax rules and improving transparency to prevent tax avoidance and ensure that companies pay their fair share of taxes.

The 15 BEPS actions are grouped into four categories:

1. Actions to address the digital economy and new business models,
2. Actions to neutralize the effects of hybrid mismatch arrangements,
3. Actions to strengthen controlled foreign company (CFC) rules, and
4. Actions to improve transparency and improve dispute resolution mechanisms.

BEPS Actions:

1) Addressing the Tax Challenges Arising from the Digitalization of the Economy

A plan to neutralise the effects of hybrid mismatches arrangements and arbitrage, introducing coherence into national tax systems while allowing nations to retain sovereignty over their domestic tax policies.

This action item recognizes that the digitalization of the economy has led to new business models that may not fit well with current international tax rules, resulting in a misalignment between where profits are taxed and where the value is created.

The aim of this action item is to develop a consensus-based solution to address the tax challenges arising from the digitalization of the economy. The solution would ensure that companies conducting business in the digital economy pay their fair share of taxes, irrespective of their physical presence in a particular jurisdiction.[1]

2) Neutralising the Effects of Hybrid Mismatch Arrangements

The aim of this action item is to prevent multinational companies from exploiting differences in the tax treatment of financial instruments and entities between countries to reduce their overall tax liability, which can result in double non-taxation or reduced taxation.

Hybrid mismatch arrangements refer to cross-border transactions that take advantage of differences in the tax treatment of a financial instrument or entity in different countries to obtain a tax benefit. These arrangements can be achieved through a variety of mechanisms, including differences in classification of entities or

1 Deloitte article (page 1-3) - BEPS actions Action 1 https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-uk-beps-action-1.pdf

instruments, differences in tax residence, or the use of hybrid instruments.

To neutralize the effects of hybrid mismatch arrangements, the OECD has developed a model set of rules to ensure that these arrangements are no longer used for tax avoidance. The rules are designed to prevent mismatches in tax treatment between different countries, and are based on two broad categories of hybrid mismatches:

1. Deduction/non-inclusion (D/NI) mismatches: This occurs when a payment made by a taxpayer is deductible for tax purposes in one country, but is not subject to taxation in another country. Under the BEPS Action 2, countries must implement rules that deny the deduction for such payments in the country of the payer, or tax the payment in the country of the recipient.
2. Double deduction (DD) mismatches: This occurs when a payment made by a taxpayer is deductible for tax purposes in more than one country. Under the BEPS Action 2, countries must implement rules that deny the deduction for such payments in one of the countries, or tax the payment in the other country.[1]

3) Designing Effective Controlled Foreign Company Rules

These rules impose tax liability on parent companies for their subsidiaries profits, OECD aims to develop recommendations

1 BEPS Action 2 – Hybrids: OECD final proposals and their potentially wide impact on cross-border dealings – https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2015/10/beps-action-2-hybrids-oecd-final-proposals-and-their-potentially-wide-impact-on-crossborder-dealings.pdf

regarding the design and strengthening of controlled foreign company (CFC) rules[1].

The aim of this action item is to address the tax challenges arising from the use of CFCs by multinational enterprises (MNEs) to shift profits to low-tax jurisdictions.

CFCs are subsidiary companies established in low-tax jurisdictions where the parent company is located in a high-tax jurisdiction[2]. CFC rules are designed to prevent MNEs from artificially shifting profits to these low-tax jurisdictions by requiring the parent company to include the profits of its CFCs in its taxable income. The objective is to ensure that the rules are designed in such a way that they are effective in preventing artificial profit shifting while minimizing compliance costs for businesses.[3]

4) Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

The aim of this action item is to address the tax challenges arising from the excessive interest deductions claimed by multinational enterprises (MNEs) to reduce their taxable income.

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1 For a summary of CFC rules in five major EU countries (Germany, UK, Italy, France, and Spain), see Ernst and Young, at http://www.m-i-tax.de/content/Wichtige_Links/Alumni_Netzwerk/documents/cfcrules_000.pdf. Currently, EU rules generally exempt other EU countries, following court decisions. For a list of selected countries with and without CFC rules and an indication of their strength, see Kevin Markle and Leslie Robinson, "Tax Haven Use Across International Tax Regimes," November 2012, at http://faculty.tuck.dartmouth.edu/images/uploads/faculty/leslierobinson/marklerobinson.pdf.

2 CFC in U.S. discussions stands for "controlled foreign corporation," but in Europe and the OECD in general, it stands for "controlled foreign company." Discussions also refer to "controlled foreign enterprises" (CFEs). The United States determines its deferral rule on the basis of foreign incorporation.

3 https://www.oecd.org/tax/beps/beps-actions/action3/

MNEs can use a variety of methods to artificially shift profits to low-tax jurisdictions. One such method involves claiming excessive interest deductions on loans made by related parties. By doing so, MNEs can reduce their taxable income in high-tax jurisdictions and shift profits to low-tax jurisdictions.

Action 4 of the BEPS initiative aims to develop a common approach to limit base erosion involving interest deductions and other financial payments. The objective is to ensure that interest deductions are aligned with the economic activities of the taxpayer and that MNEs cannot use excessive interest deductions to artificially reduce their taxable income.

The BEPS Action 4 report sets out recommended approaches for limiting base erosion involving interest deductions and other financial payments. Some of the key recommendations include:

1. Limiting interest deductions to a percentage of a taxpayer's earnings before interest, taxes, depreciation, and amortization (EBITDA).
2. Introducing a fixed ratio rule that sets a cap on interest deductions as a percentage of a taxpayer's total assets.
3. Implementing targeted anti-abuse rules to prevent taxpayers from avoiding the rules through artificial arrangements.[1]

5) Counter harmful tax practices more effectively, considering transparency and substance

The aim of this action item is to address the tax challenges arising from certain tax practices that can be used by jurisdictions to attract investment and businesses at the expense of other jurisdictions.

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1 BEPS Action 4 - proposed limits on interest deductions – https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2015/10/beps-action-4-proposed-limits-on-interest-deductions-what-do-they-mean-for-businesses.pdf

Harmful tax practices refer to tax regimes that provide preferential treatment to certain taxpayers or activities, or that artificially allocate profits to low-tax jurisdictions without any corresponding economic activity taking place. These practices can result in double non-taxation or reduced taxation, and can lead to the erosion of the tax base of other jurisdictions.

Action 5 of the BEPS initiative aims to develop a framework to identify and counter harmful tax practices more effectively. The objective is to ensure that tax regimes do not provide preferential treatment to certain taxpayers or activities, and that there is greater transparency and substance in tax practices.

The BEPS Action 5 report sets out recommended approaches for countering harmful tax practices more effectively. Some of the key recommendations include:

1. Developing a process for reviewing preferential tax regimes to determine whether they are harmful and should be amended or abolished.
2. Ensuring that preferential tax regimes have substance, meaning that they are supported by real economic activity and not simply designed to attract artificial profit shifting.
3. Improving transparency in tax practices by requiring greater disclosure of information about tax regimes and their application to taxpayers.
4. Encouraging greater international cooperation and information sharing to identify and counter harmful tax practices.[1]

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1 Deloitte article (page 1- 4) – BEPS action 5 – https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-uk-beps-action-5.pdf

6) Preventing treaty abuse

The aim of this action item is to address the tax challenges arising from the misuse of tax treaties to achieve double non-taxation or reduced taxation.

Tax treaties are bilateral agreements between countries that determine the taxing rights of each country on cross-border transactions. They aim to prevent double taxation and provide greater certainty for taxpayers. However, some taxpayers have been misusing tax treaties to achieve double non-taxation or reduced taxation, often through the use of treaty shopping.

Treaty shopping refers to the practice of structuring cross-border transactions in such a way as to take advantage of favourable tax treaty provisions, often by routing the transaction through a third country that has a more favourable tax treaty with one of the countries involved in the transaction.

The BEPS Action 6 report sets out recommended approaches for preventing treaty abuse. Some of the key recommendations include:

1. Developing a comprehensive and coordinated approach to prevent treaty abuse, including the development of a minimum standard for tax treaties.
2. Implementing a general anti-abuse rule in tax treaties to prevent the misuse of tax treaties for treaty shopping purposes.
3. Introducing a limitation on benefits (LOB) rule in tax treaties to ensure that only those taxpayers that have a sufficient economic connection with the treaty country can benefit from the treaty.
4. Encouraging greater transparency in tax treaty practices, including the exchange of information between countries on

treaty shopping arrangements and the adoption of a multilateral instrument to implement treaty-related measures.[1]

7) Preventing the artificial avoidance of permanent establishment status

This will redefine permanent establishments to prevent undue avoidance of local taxes.

The aim of this action item is to address the tax challenges arising from the artificial avoidance of PE status by multinational enterprises (MNEs).

A permanent establishment is a fixed place of business through which an enterprise carries on its business activities in another country. It is a key concept in international tax law because it determines the taxing rights of each country on the profits of the enterprise. Some MNEs have been artificially avoiding PE status by structuring their business activities in a way that does not create a fixed place of business in another country, even though they may have significant economic presence in that country.

The BEPS Action 7 report sets out recommended approaches for preventing the artificial avoidance of PE status. Some of the key recommendations include:

1. Modifying the definition of PE in tax treaties to prevent the artificial avoidance of PE status, including the creation of a new anti-fragmentation rule.
2. Developing new rules to address the digital economy and ensure that MNEs are taxed in the countries where they have significant economic presence.

1https://www.oecd.org/tax/beps/beps-actions/action6/#:~:text=BEPS%20Action%206%20addresses%20treaty,other%20forms%20of%20treaty%20abuse.

3. Ensuring that the existing transfer pricing rules are consistent with the modified PE definition, to prevent the artificial allocation of profits to low-tax jurisdictions.
4. Encouraging greater transparency in the activities of MNEs and the allocation of their profits between countries, including the exchange of information between countries on MNEs' activities and profits.[1]

8) Transfer pricing of intangibles

The aim of this action item is to ensure that profits associated with the development, enhancement, maintenance, protection, and exploitation of intangibles are taxed in the countries where the value is created.

Intangible assets, such as patents, trademarks, and copyrights, can be highly mobile and difficult to value. Some multinational enterprises (MNEs) have been using transfer pricing strategies to shift profits associated with intangibles to low-tax jurisdictions, even though the value is created in other countries.

The BEPS Action 8 report provides guidance on how to determine the arm's length price for transactions involving intangibles, including the development, ownership, and use of intangible assets. Some of the key recommendations include:

1. Identifying and characterizing intangibles: This involves identifying and characterizing the intangible assets that are being transferred and determining their economic ownership.
2. Determining the arm's length price: This involves selecting the most appropriate transfer pricing method based on the specific facts and circumstances of the transaction, and

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1 https://www.roedl.com/insights/beps/beps-action-7-prevent-the-artificial-avoidance-of-permanent-establishment-status

applying it to determine the arm's length price for the transaction.

3. Enhancing transparency: This involves requiring MNEs to disclose more information about their transfer pricing policies and practices related to intangibles, including the location of intangible assets, the ownership structure of related entities, and the nature of the transactions.[1]

9) Risks and Capital

The aim of this action item is to ensure that risks and capital are appropriately allocated among related entities, and that the profits associated with those risks and capital are allocated to the entities that assume them.

Multinational enterprises (MNEs) can use transfer pricing strategies to allocate risks and capital in a way that allows them to shift profits to low-tax jurisdictions, even though the value is created in other countries. For example, an MNE may allocate high-risk activities to a low-tax subsidiary, while allocating low-risk activities to a high-tax subsidiary. This can result in a distortion of profits and can undermine the fairness and integrity of the international tax system[2].

The BEPS Action 9 report provides guidance on how to allocate risks and capital among related entities, and how to determine the

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1 https://www.oecd.org/ctp/transfer-pricing/BEPS-implementation-guidance-on-hard-to-value-intangibles-discussion-draft.pdf

2 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, On June 7, 2017, 68 jurisdictions signed the Multilateral Convention to Implement Tax Treaty Related Measures to
Prevent Base Erosion and Profit Shifting (the MLI) at the Organisation for Economic Co-operation and Development
(OECD) in Paris.

appropriate transfer pricing for transactions involving those risks and capital. Some of the key recommendations include:

1. Identifying and characterizing risks: This involves identifying and characterizing the risks that are being assumed by the related entities, and determining the level of control that each entity has over those risks.
2. Allocating risks and capital: This involves determining the appropriate allocation of risks and capital among related entities based on the functions performed, assets used, and risks assumed by each entity.
3. Enhancing transparency: This involves requiring MNEs to disclose more information about their transfer pricing policies and practices related to risks and capital, including the allocation of risks and capital among related entities, and the nature of the transactions.

10) High-Risk transactions

Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation. [1]

11) Measuring and monitoring BEPS

Action 11 of the BEPS is focused on measuring and monitoring the impact of BEPS and related tax avoidance strategies on a global scale. The aim is to develop methodologies for assessing

1 https://www.oecd.org/tax/beps/beps-actions/actions8-10/

the scale and impact of BEPS practices, and to use this data to inform future policy decisions.

One of the key components of Action 11 is the development of a framework for collecting data on BEPS, including indicators that can be used to identify and monitor BEPS practices across different countries and industries. This framework includes a range of quantitative and qualitative indicators, such as effective tax rates, profit shifting ratios, and other measures of tax avoidance and aggressive tax planning.

Another important aspect of Action 11 is the development of country-specific and region-specific reports that identify key areas of concern and provide recommendations for addressing BEPS practices. These reports are intended to help policymakers and tax authorities understand the nature and scope of BEPS activities in their jurisdictions, and to develop targeted strategies for addressing them.

Finally, Action 11 also includes efforts to enhance collaboration and information-sharing between countries and tax authorities. This includes the development of a global forum for discussing BEPS issues and sharing best practices, as well as efforts to improve the exchange of tax information between jurisdictions.[1]

12) Mandatory disclosure BEPS

This action aims to provide a framework for the design of mandatory disclosure rules for countries that choose to adopt them. This action sets out recommendations for the design of mandatory disclosure rules that would enable jurisdictions to obtain early information on potentially aggressive or abusive tax planning schemes. The report also sets out recommendations for rules targeting international schemes, as well as recommendations

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1 https://www.oecd.org/tax/beps/beps-actions/action11/

for the development of more effective information exchange and cooperation between tax authorities.

Under Action 12, participating countries are encouraged to develop rules that require taxpayers and intermediaries, such as tax advisors and financial institutions, to disclose certain types of transactions that are perceived as potentially aggressive or abusive. These mandatory disclosure rules typically require taxpayers to report specific details about the transactions, including the amount and nature of the tax benefits that are being sought, as well as information about the parties involved and the jurisdictions in which they are located. [1]

The goal of these mandatory disclosure rules is to improve the ability of tax authorities to identify and address harmful tax practices, by providing them with more information about potentially problematic transactions.

One of the key challenges of implementing mandatory disclosure rules is balancing the need for increased transparency with the need to protect taxpayer confidentiality and privacy. To address these concerns, many countries have developed rules that provide for the secure and confidential reporting of information, as well as penalties for unauthorized disclosure or misuse of the information provided.[2]

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1 Prof. Dr. Ana Paula Dourado, University of London – mandatory disclosure rules: BEPS Action 12 article (page 1-6) – http://ibdt.org.br/material/arquivos/Biblioteca/SLIDES/Ana%20Paula%20Dourado.pdf

2https://www.oecd.org/tax/beps/beps-actions/action12/#:~:text=beps%20action%2012%20provides%20recommendations,disclose%20aggressive%20tax%20planning%20arrangements.

13) Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

This action aims to re-examine and develop rules on transfer pricing documentation, to enhance transparency for tax authorities while considering the compliance costs for business.

Transfer pricing is the pricing of goods, services, or intangibles between related parties, such as a parent company and its subsidiaries. Transfer pricing can be used to shift profits to lower-tax jurisdictions, reducing a company's overall tax burden. In order to prevent this, countries require companies to prepare and maintain transfer pricing documentation that explains the rationale for their transfer pricing arrangements and demonstrates that they are consistent with the arm's length principle (which means that the prices charged between related parties should be the same as if they were independent parties dealing at arm's length).

Action 13 of the BEPS initiative sets out a three-tiered standardized approach to transfer pricing documentation that consists of:

1. A master file, which provides an overview of the multinational group's global business operations, including its organizational structure, business strategies, and intangible property.
2. A local file, which provides detailed information about specific transactions between related parties in a particular jurisdiction.
3. A country-by-country report, which provides aggregate information on the global allocation of the multinational group's income and taxes paid, as well as other indicators of economic activity, such as the number of employees and tangible assets.

The country-by-country report is designed to help tax authorities assess transfer pricing risk and identify areas of potential tax avoidance. It requires multinational groups to provide information on their global activities and the taxes paid in each jurisdiction where they operate.[1]

14) Making Dispute Resolution Mechanisms More Effective

Action 14 aims to make dispute resolution mechanisms more effective by developing solutions to address issues that prevent countries from resolving treaty-related disputes under mutual agreement procedures (MAPs).

Double taxation can occur when two or more countries claim the right to tax the same income or profits. This can arise when there is a disagreement between tax authorities over the appropriate allocation of profits between related parties or the application of tax treaties.

Action 14 of the BEPS initiative sets out a number of measures to improve dispute resolution mechanisms, including:

1. Improving the mutual agreement procedure (MAP), which is the process by which tax authorities from two countries seek to resolve disputes over the application of tax treaties. The MAP process is designed to ensure that taxpayers are not subject to double taxation. Action 14 aims to make the MAP process more effective by establishing clear timeframes for the resolution of disputes and by providing for greater transparency and accountability.
2. Developing a multilateral instrument (MLI) that can be used to implement changes to tax treaties. The MLI [2]is

1 https://www.roedl.com/insights/beps/beps-action-13-re-examine-transfer-pricing

2 The text of the MLI and the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of the

designed to enable participating countries to implement the tax treaty-related measures of the BEPS project without the need to renegotiate individual tax treaties. The MLI includes provisions to improve dispute resolution mechanisms, such as mandatory binding arbitration for cases where disputes cannot be resolved through the MAP process.

3. Developing a toolkit to assist tax authorities in the effective implementation of dispute resolution mechanisms. The toolkit includes best practices and guidance on the use of alternative dispute resolution mechanisms, such as mediation and conciliation.[1]

15) Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

Action 15 of the Base Erosion and Profit Shifting (BEPS) initiative focuses on developing a multilateral instrument (MLI) that can be used to modify existing bilateral tax treaties between countries, it aims to develop a MLI to enable jurisdictions to quickly and consistently amend bilateral tax treaties in line with certain BEPS recommendations.

The objective of this action is to streamline the implementation of BEPS-related measures by allowing participating countries to update their tax treaties without the need for lengthy and complex bilateral negotiations.[2]

United Arab Emirates submitted to the Depositary upon ratification on 29 May 2019 can be found on the MLI Depositary (OECD) webpage.

1https://www.oecd.org/tax/beps/beps-actions/action14/#:~:text=The%20BEPS%20Action%2014%20Minimum,tax%2Drelated%20disputes%20between%20jurisdictions.

2 https://www.deloitte.com/global/en/services/tax/analysis/beps-actions.html

The MLI provides a standardized approach to implementing BEPS measures across multiple tax treaties. It allows countries to incorporate a range of measures into their existing tax treaties without the need to renegotiate each treaty individually.

The MLI covers a range of BEPS-related measures, including those related to hybrid mismatches, treaty abuse, and dispute resolution. Participating countries can choose which measures to adopt and the scope of their application.

By providing a standardized approach to implementing BEPS measures, the MLI helps to ensure consistency and coherence across multiple tax treaties. It also helps to promote transparency and reduce opportunities for tax avoidance and evasion.[1]

Chapter 4 – The Aim of MLI & BEPS Actions Project:

The Multilateral Instrument (MLI) was developed to help countries modify their existing bilateral tax treaties in order to implement the BEPS recommendations without the need to renegotiate each individual treaty. However, it is important to note that the MLI itself does not eliminate BEPS problems entirely. Rather, it provides a framework for countries to coordinate and collaborate in implementing the BEPS recommendations and addressing certain tax treaty-related issues.

While the MLI[2] does not eliminate all BEPS problems, it does help to address some of the most common issues related to tax treaty abuse and the shifting of profits to low-tax jurisdictions. For example, the MLI includes provisions related to the prevention of

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1 OECD BEPS Action Plan article – page (13 -25)

2 The text of the MLI and the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of the United Arab Emirates submitted to the Depositary upon ratification on 29 May 2019 can be found on the MLI Depositary (OECD) webpage.

treaty abuse, the introduction of a principal purpose test, and the implementation of country-by-country reporting for transfer pricing purposes. These provisions are designed to help ensure that companies are paying their fair share of taxes in the jurisdictions where they operate[1].

However, it is important to note that the effectiveness of the MLI will depend on the number of countries that sign on and the specific provisions that they choose to adopt. As of March 2023, 95 countries have signed the MLI, with many more expected to join in the future. Additionally, the implementation of the MLI provisions may take time, as countries will need to modify their existing tax treaties and adopt new procedures and guidelines.

The BEPS project was a significant global initiative that aimed to address the problems and issues caused by base erosion and profit shifting (BEPS) practices. The 15 BEPS action plans introduced a comprehensive set of measures designed to prevent multinational companies from using aggressive tax planning techniques to avoid paying their fair share of taxes[2].

While it is still too early to determine the full impact of the BEPS project, there is evidence to suggest that it has had some success in reducing the opportunities for companies to engage in BEPS practices. The implementation of country-by-country reporting, transfer pricing documentation requirements, and the introduction of the Multilateral Instrument (MLI) are some of the key measures that have been put in place to address BEPS.

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1 Tax Treaty-Related BEPS Measure, Artificial avoidance of PE status through commissionaire arrangements and similar strategies (page 15), Articles 12 and 15.

2 Tax Treaty-Related BEPS Measure, Elements of a minimum standard to ensure the timely, effective and efficient resolution of treaty-related disputes (page 13), and best practices (page 28), Articles 16 and 17.

Finally, the introduction of the MLI has provided a mechanism for countries to modify their existing bilateral tax treaties to implement the BEPS project's measures. By signing up to the MLI, countries can ensure that their tax treaties are in line with the latest international standards and that they have the necessary tools to address BEPS.

While the BEPS project has made significant progress in addressing BEPS practices, there is still much work to be done. The effectiveness of the measures introduced under the BEPS project will depend on their proper implementation and enforcement by national tax authorities.

Chapter 5 – Conclusion & Recommendations

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and the Base Erosion and Profit Shifting (BEPS) project have had significant impacts on the international tax system and countries' tax treaties.

The MLI has resulted in the modification of over 1700 bilateral tax treaties among the participating countries, including many important jurisdictions. The modifications are intended to implement the BEPS measures and strengthen the anti-abuse provisions of these treaties. This has helped to address the issue of treaty shopping, where companies take advantage of loopholes in tax treaties to shift their profits to low-tax jurisdictions.

The MLI has also introduced new provisions such as the Principal Purpose Test (PPT) and the Authorized OECD Approach (AOA) for transfer pricing of intangibles. The PPT allows tax authorities to deny treaty benefits to a transaction if one of its principal purposes was to obtain such benefits in a manner that is not in accordance with the object and purpose of the treaty. The AOA

provides a clear framework for determining the value of intangible assets for transfer pricing purposes, which helps to prevent profit shifting[1].

Similarly, the BEPS project has resulted in the development of 15 specific actions that address various tax avoidance strategies. These actions have been adopted by countries worldwide and have led to changes in domestic laws and tax treaties to prevent BEPS. The BEPS project has also led to increased cooperation and information sharing among tax authorities, which has improved the effectiveness of tax enforcement.

The MLI and BEPS project have had positive impacts on the international tax system and countries' tax treaties. They have helped to prevent tax avoidance and profit shifting, resulting in more equitable distribution of tax revenues among countries. However, some challenges remain, such as ensuring consistency in the implementation of the MLI modifications and the BEPS measures among countries. Additionally, some countries have not yet ratified the MLI or adopted all of the BEPS actions, which creates a risk of tax planning opportunities being shifted to those countries.

the Multilateral Convention to Implement Tax Treaty [2]Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and the Base Erosion and Profit Shifting (BEPS) Actions have made significant progress towards addressing tax avoidance and improving transparency in the international tax system.

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1 Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report (Published on 5 October 2015)

2 Multilateral Convention to implement the Tax Treaty Related measures to prevent Base Erosion and Profit Shifting, Although the MLI position for Mauritius came into force on 01 February 2020, the amendments to the treaties being modified by the MLI will take effect from 01 August 2020 onwards.

The MLI has been successful in streamlining the implementation of measures to prevent base erosion and profit shifting. Its implementation has resulted in the amendment of several tax treaties, which were previously not subject to the BEPS minimum standards. The MLI has also increased the speed of implementation, making it more efficient for countries to adopt BEPS measures.

The BEPS Actions have also made significant strides in addressing tax avoidance, and they have set a new global standard for international tax rules. The Actions have led to the implementation of country-by-country reporting and other measures that increase transparency and prevent profit shifting[1].

These efforts have resulted in increased cooperation between tax authorities, and the exchange of information has become more common. This has led to a decrease in tax avoidance and an increase in tax revenues for countries. Additionally, taxpayers are now subject to more stringent reporting requirements, making it harder to avoid taxes.

However, there are still challenges that remain, and the effectiveness of the MLI and BEPS Actions are still being evaluated. While progress has been made, some countries have been slow to adopt the measures, and there are concerns about the complexity of the rules and their impact on businesses.

Overall, the MLI and BEPS Actions have been instrumental in addressing the problems caused by base erosion and profit shifting. These initiatives have created a more transparent international tax system, which has led to increased cooperation between countries and a reduction in tax avoidance. Going forward, it is essential that countries continue to work together to

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1 Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report (Published on 5 October 2015)

ensure that the measures remain effective and that any challenges are addressed.

<u>Pros & Cons of MLI and BEPS actions:</u>

The pros and cons of MLI:

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) has several advantages and disadvantages.

<u>Pros:</u>

1. Multilateral approach: MLI provides a multilateral approach to implement changes to tax treaties, which is more efficient than amending bilateral treaties individually.
2. Quick implementation: MLI allows for the swift implementation of BEPS measures, which may have taken years to implement through traditional treaty amendment processes.
3. Flexibility: The MLI allows countries to choose which measures they want to adopt and which tax treaties they want to apply them to, providing flexibility in implementation.
4. Transparency: The MLI requires countries to provide information about their reservations, which increases transparency and helps identify potential gaps in implementation.
5. Reduces double taxation: The MLI provides for the resolution of double taxation disputes, which can save time and resources for taxpayers. [1]

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1 OECD: Base Erosion and Profit Shifting - Frequently Asked Questions (page 13-18) - https://www.oecd.org/tax/beps/beps-frequently-asked-questions.htm

Cons:

1. Complexity: The MLI is a complex instrument, and its application requires a high level of technical expertise, which may be challenging for some countries.
2. Uncertainty: The MLI's provisions are dependent on the actions of other countries and the reservations they make, which can create uncertainty in its application.
3. Limited scope: The MLI only applies to tax treaties that are signed by both parties to the MLI, which limits its scope and effectiveness.
4. Potential for inconsistent application: The MLI's flexibility in implementation may result in inconsistent application across different countries, which may create additional compliance burdens for taxpayers.
5. Costs: The implementation of the MLI may involve additional costs for countries, particularly those with limited resources. [1]

The pros and the cons of the BEPS actions:

Pros:

1. Increased transparency: One of the primary benefits of the BEPS action plan is increased transparency. With more information being shared between governments, it has become more difficult for multinational corporations to engage in tax avoidance practices.
2. More equitable taxation: BEPS aims to ensure that multinational companies pay taxes where they generate profits. This helps to create a more equitable tax system and ensures that all businesses pay their fair share.

1 Tax Foundation: Pros and Cons of the OECD’s Anti-BEPS Project - https://taxfoundation.org/pros-cons-oecds-anti-beps-project/

3. Improved international cooperation: The BEPS action plan has encouraged countries to work together to combat tax avoidance. This has led to increased international cooperation and better communication between tax authorities.
4. Increased tax revenue: By closing tax loopholes and preventing tax avoidance, governments have been able to increase their tax revenue.
5. Enhanced tax base: The BEPS actions have helped to prevent multinational corporations from shifting profits to low-tax jurisdictions, thereby increasing the tax base of countries and ensuring that corporations pay their fair share of taxes.
6. More efficient tax systems: BEPS actions have encouraged countries to implement more efficient tax systems and policies, which can lead to more effective use of tax revenues and better services for citizens. [1]

Cons:

1. Complexity: The BEPS action plan is complex and requires a significant amount of resources to implement. This can be challenging for smaller countries with limited resources.
2. Compliance costs: The BEPS action plan has increased compliance costs for businesses, particularly for those operating in multiple jurisdictions. This can be a significant burden for smaller businesses.
3. Potential for double taxation: As countries implement the BEPS recommendations, there is a risk of double taxation –

1 Base Erosion and Profit Shifting: Pros and cons between companies and governments - https://www.ijsrp.org/research-paper-0121/ijsrp-p10957.pdf

where a business is taxed on the same income in multiple jurisdictions.

4. Limited scope: The BEPS action plan primarily focuses on the taxation of multinational corporations. It does not address issues related to individual tax evasion or tax havens.
5. Uneven implementation: The BEPS actions are not implemented uniformly across all countries, which could lead to inconsistencies and difficulties in enforcement.

Potential for unintended consequences: There is a risk that some of the BEPS actions could have unintended consequences, such as discouraging foreign investment or creating new loopholes for tax avoidance.[1]

1 https://www.oecd.org/ctp/BEPS-FAQsEnglish.pdf

Conclusion

In conclusion, the impact of Base Erosion and Profit Shifting actions on the global economy is profound and far-reaching. The substantial loss of tax revenue undermines governments' ability to provide public goods and services, exacerbates inequality, distorts investment decisions, and contributes to global trade tensions. To address these challenges, a coordinated international response is essential, focusing on creating a fairer and more transparent tax system that minimizes opportunities for profit shifting. Without such efforts, the risks of increased economic inequality, reduced public trust, and impaired economic growth will continue to threaten the stability and sustainability of the global economic landscape. In this interconnected world, collaboration among nations is crucial to ensure that all entities contribute equitably to the economies in which they operate, fostering a more balanced and inclusive global economy.

The Multilateral Instrument (MLI), developed as part of the OECD/G20 BEPS Project, aims to implement tax treaty-related measures to prevent base erosion and profit shifting in a streamlined manner. Its adoption marks a significant shift in international tax governance, with far-reaching implications for the global economy.

Economic Impacts of the MLI:

1. **Enhanced Tax Certainty**: The MLI provides a framework for countries to update their tax treaties quickly, reducing uncertainty in international tax relations. By addressing treaty abuse and ensuring that profits are taxed where economic activities occur, the MLI promotes a fairer allocation of tax revenues. This enhanced certainty can encourage cross-border investment, as businesses gain confidence that tax arrangements will be stable and equitable.
2. **Increased Tax Revenue**: By curbing aggressive tax avoidance strategies, the MLI aims to help countries recover tax revenues that have been lost to profit shifting. This is particularly crucial for developing economies, which often rely heavily on corporate tax income. Increased tax revenues can enable these countries to invest in public goods and services, driving economic development and improving living standards.
3. **Reduction of Double Taxation**: The MLI facilitates the elimination of instances of double taxation through the adoption of new measures that align tax practices globally. By addressing inconsistencies between domestic laws and international treaties, the MLI can help reduce compliance costs for businesses operating in multiple jurisdictions, fostering a more favorable environment for international trade and investment.

4. **Streamlined Compliance**: The MLI simplifies the implementation of BEPS measures by allowing countries to modify existing tax treaties rather than renegotiating them individually. This efficiency can lead to quicker adoption of best practices, reducing the administrative burden on both tax authorities and multinational corporations. Streamlined compliance can enhance the attractiveness of a jurisdiction for international business, promoting economic activity.

5. **Challenges in Implementation**: While the MLI has the potential to improve the global tax landscape, its effectiveness depends on widespread adoption and implementation by countries. Disparities in commitment and capacity among nations can lead to inconsistent application, undermining the MLI's objectives. Additionally, countries may adopt reservations to certain provisions, which could limit the instrument's overall impact.

6. **Impact on Global Trade Dynamics**: As countries align their tax treaties with MLI provisions, the competitive landscape for international business may change. Jurisdictions that actively implement the MLI may become more attractive to foreign investors, while those resistant to reform could risk becoming less competitive. This shift can reshape global trade dynamics, influencing investment flows and economic partnerships.

- The Multilateral Instrument represents a pivotal development in the global tax landscape, with significant implications for economic interactions worldwide. By enhancing tax certainty, increasing tax revenue, reducing double taxation, and streamlining compliance, the MLI aims to create a fairer and more transparent international tax environment. However, its success hinges on broad and effective implementation across countries, requiring cooperation and commitment from governments. As nations navigate the complexities of global taxation, the MLI has the potential to foster a more balanced economic landscape, ultimately promoting sustainable growth and development. Addressing the challenges of its adoption will be essential to realizing the full benefits of this innovative instrument, shaping the future of international taxation and global economic stability.

Recommendations:

Recommendations on Multilateral Instruments (MLI):

1- Analyze the impact of the MLI convention on the tax treaty network and how it is changing the international tax landscape. Consider the different measures included in the MLI and how they are being implemented by countries.

2- Evaluate the role of the MLI in combating BEPS and other tax avoidance practices. Consider the effectiveness of the MLI in addressing issues such as treaty abuse, hybrid mismatches, and other tax planning strategies.

3- Analyze the MLI's impact on taxpayers, including multinational corporations and individuals. Consider the potential effects on tax planning, tax compliance, and administrative procedures.

4- Discuss the challenges and opportunities of implementing the MLI convention, including the potential impact on domestic tax laws and the need for coordination among countries.

5- Analyze the potential impact of the MLI on developing countries and how it can help to promote tax revenue mobilization and prevent tax base erosion.

6- Examine the challenges and opportunities of the MLI for tax authorities and their efforts to combat tax evasion, corruption, and other illicit financial flows.

7- Finally, consider the potential impact of the MLI and other international tax initiatives on global economic development and the role of international organizations such as the OECD and the UN in shaping the future of international tax policy.

Recommendations on Base Erosion and Profit Shifting plan:

1- Analyze the effectiveness of the BEPS actions in addressing tax avoidance by multinational enterprises. Assess the extent to which the BEPS actions have been adopted by countries and their impact on the global tax system.

2- Study the role of tax havens in facilitating base erosion and profit shifting and propose measures that could be adopted to curb the use of tax havens by multinational enterprises.

3- Examine the impact of the BEPS actions on developing countries and assess the extent to which they have been able to implement the BEPS recommendations.

4- Explore the legal and ethical implications of the BEPS actions on multinational enterprises, governments, and society at large. Consider the potential conflicts that could arise between different stakeholders.

5- Analyse the challenges and limitations of the BEPS actions.

6- Assess the role of technology in addressing base erosion and profit shifting that could be adopted to leverage technology to improve tax compliance and enforcement.

7- Study the implications of the BEPS actions on tax treaties and propose measures that could be adopted to ensure consistency and coherence in the global tax system.

8- Examine the role of international organizations such as the OECD and the UN in promoting tax cooperation and coordination among countries.

9- Explore the role of public opinion and civil society in promoting tax transparency and accountability.

ABBREVIATIONS

BEPS	Base Erosion and Profit Shifting
MLI	Multilateral Instrument
MNCs	Multinational Corporations
OECD	Organizations for Economic Co-operation and Development
G20	The Group of Twenty - Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union.
EU	European Union
CTA	Covered Tax Agreements
LOB	Limitation of Benefits
PPT	Principal Purpose Test
PE	Permanent Establishment
MAP	The Mutual Agreement Procedure
MBTA	Mandatory Binding Treaty Arbitration
UAE	United Arab Emirates
UN	United Nations
BIAC	Business and Industry Advisory Committee
TUAC	Trade Union Advisory Committee
D/NI	Deduction/non-inclusion
CFC	Controlled Foreign Company
MNEs	Multinational Enterprises
GAAR	General Anti-Abuse Rule
AOA	The Authorized OECD Approach

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