开发用于修订双边税收协定的多边工具
第15项行动计划

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EXECUTIVE SUMMARY

The endorsement of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) by the Leaders of the G20 in Saint-Petersburg in September 2013 shows unprecedented political support to adapt the current international tax system to the challenges of globalisation. Tax treaties are based on a set of common principles designed to eliminate double taxation that may occur in the case of cross-border trade and investments. The current network of bilateral tax treaties dates back to the 1920s and the first soft law Model Tax Convention developed by the League of Nations. The Organisation for Economic Co-operation and Development (OECD) and the United Nations have subsequently updated model tax conventions based on that work. The contents of those model tax conventions are reflected in thousands of bilateral agreements among jurisdictions.

Globalisation has exacerbated the impact of gaps and frictions among different countries’ tax systems. As a result, some features of the current bilateral tax treaty system facilitate base erosion and profit shifting (BEPS) and need to be addressed. Beyond the challenges faced by the current tax treaty system on substance, the sheer number of bilateral treaties makes updating the current tax treaty network highly burdensome. Even where a change to the OECD Model Tax Convention is consensual, it takes a substantial amount of time and resources to introduce it into most bilateral tax treaties. As a result, the current network is not well-synchronised with the model tax conventions, and issues that arise over time cannot be addressed swiftly. Without a mechanism to swiftly implement them, changes to Models only make the gap between the content of the Models and the content of actual tax treaties wider. This clearly contradicts the political objective to strengthen the current system by putting an end to BEPS, in part by modifying the bilateral treaty network. Doing so is necessary not only to tackle BEPS, but also to ensure the sustainability of the consensual framework to eliminate double taxation. For this reason, governments have agreed to explore the feasibility of a multilateral instrument that would have the same effects as a simultaneous renegotiation of thousands of bilateral tax treaties.

Action 15 of the BEPS Action Plan provides for an analysis of the tax and public international law issues related to the development of a multilateral instrument to enable countries that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested countries will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution. The goal of Action 15 is to streamline the implementation of the tax treaty-related BEPS measures. This is an innovative approach with no exact precedent in the tax world, but precedents for modifying bilateral treaties with a multilateral instrument exist in various other areas of public international law. Drawing on the expertise of public international law and tax experts, the 2014 Report, which is reproduced hereafter, explored the technical feasibility of a multilateral hard law approach and its consequences on the current tax treaty system. It identified the issues arising from the development of such an instrument and provided an analysis of the international tax, public international law, and political issues that arise from such an approach.
摘要

2013年9月，在圣彼得堡举行的G20峰会上，各国领导人通过了反税基侵蚀和利润转移（BEPS）行动计划，显示出各国为应对全球化挑战，对改革当前国际税收体制所给予的空前支持。税收协定的制定是基于一系列旨在消除跨境贸易投资中的双重征税问题而设计的通用原则。目前双边税收协定框架的形成可以追溯至二十世纪二十年代由国际联盟制定的最初的“软法”税收协定范本。经济合作与发展组织（Organization for Economic Co-operation and Development，OECD）和联合国（UN）随后在此基础上推出了各自税收协定范本的更新版本。上述税收协定范本内容在不同税收管辖地区之间签订的数以千计的双边协定中得以体现。

全球化进程加剧了不同国家税收体制之间的间矛盾和摩擦。因此，双边税收协定中的一些特征可能导致BEPS而亟待修正。除了目前修订双边税收协定内容带来的挑战之外，单就双边协定的庞大数量而言，更新现有的双边税收协定也是一项非常繁重的工作。即便对税收协定范本的某项修订得到了各方认同，该项修订内容仍然需要较长时间和资源才能够应用到大部分的双边税收协定中。因此，目前的双边税收协定体系并不能够与税收协定范本进行有效的同步，而以后不断出现的问题亦将不能及时被处理。在缺乏迅速的执行机制的情况下，对税收协定范本的修订只会加大范本的内容和税收协定实际文本之间的差距。这明显与各国通过消除BEPS并在一定程度上通过对现有双边税收协定体系的修订，来加强现有税收体制的政治目标相违背。建立迅速的执行机制不仅为消除BEPS，对于保证税收协定的稳定性和可靠性也十分必要。鉴于此，各国政府同意就制定多边协议的可行性进行研究，而多边协议的效用即相当于同时协商数千个双边税收协定。

BEPS第15项行动计划提供了制定多边协议相关税务问题的国际公法问题上的分析，以帮助各国在BEPS和修订双边税收协定中的各项措施。在此基础上，感兴趣的国家可以制定一揽子多边协议，为解决国际税收问题提供新方法，以应对并促进适应全球经济快速更新的需要。第15项行动计划的目标在于提高与税收协定相关的问题和反BEPS措施的实施效率。这是税收领域前所未有的创新，但也在其他国际公法领域里，有若干通过多边协议修订双边协定的先例。综合国际公法和税务专家的观点，2014年报告（参见后文）将探究制定多边“硬法”的技术可行性，以及对现有税收协定体系的影响。该报告提出了制定多边协议可能产生的问题，并就国际税收、国际公法以及政治影响的角度进行了分析。
The 2014 Report also concluded that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly. Based on this analysis, a mandate for the formation of an ad-hoc group ("the Group") to develop a multilateral instrument on tax treaty measures to tackle BEPS, which is reproduced hereafter, was approved by the OECD Committee on Fiscal Affairs and endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015. The Group is open to participation from all interested countries on an equal footing and is served by the OECD Secretariat. The Group begun its work in May 2015 with the aim to conclude its work and open the multilateral instrument for signature by 31 December 2016. Participation in the development of the multilateral instrument is voluntary and does not entail any commitments to sign such instrument once it has been finalised.
2014 年报告的结论是，多边协议是合理可行的，且对于此多边协议的协商应尽快召集开展。基于此项分析，2015 年 2 月，OECD 财政事务委员会批准设立特别小组，制定与税收协定措施相关的多边协议以应对 BEPS 的工作方案（参见后文），该方案同时被 G20 财政部长和中央银行首脑所认可。特别小组向所有感兴趣国家平等开放，由 OECD 秘书处组织日常工作。2015 年 5 月，特别小组启动工作，力求于 2016 年 12 月 31 日完成该多边协议的起草以供各国签署。多边协议的起草工作由各国自愿参与，对起草工作的参与不意味着参与方对起草工作完成后的多边协议作出签署承诺。
A MANDATE FOR THE DEVELOPMENT OF A MULTILATERAL INSTRUMENT ON TAX TREATY MEASURES TO TACKLE BEPS

Preamble

Recognising that Action 15 of the Action Plan on Base Erosion and Profit Shifting (BEPS) called for the development of a multilateral instrument to implement measures developed in the course of the work on BEPS and modify bilateral tax treaties;

Considering that the Report "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties", which was approved by the Committee on Fiscal Affairs and endorsed by the Leaders of the G20, concluded that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly;

Noting that the G20 Leaders Communiqué adopted in Brisbane on 16 November 2014 welcomes the significant progress of the Base Erosion and Profit Shifting (BEPS) Action Plan "to modernise international tax rules";

The countries participating in the OECD-G20 BEPS Project have agreed to establish an ad hoc Group (hereinafter "the Group") with the mandate set out below. They recognise that the Group is not a formal or informal OECD body and therefore participation of non-OECD members in the Group does not create, and cannot be interpreted to create, a precedent in the context of OECD procedures for the participation of non-members in OECD activities.

A. Objective

1. The Group shall develop a multilateral instrument to modify existing bilateral tax treaties solely in order to swiftly implement the tax treaty measures developed in the course of the OECD-G20 BEPS Project.

B. Participation

1. Membership of the Group is open to all interested States.
2. All members of the Group participate on an equal footing.
3. Non-State Jurisdictions can participate in the Group as Observers upon a specific invitation by the Group.
4. Relevant international and regional intergovernmental organisations can be invited by the Group to participate as Observers.

C. Duration

1. The Group will start its work no later than July 2015.
2. The Group will aim to conclude its work and open the multilateral instrument for signature by 31 December 2016.
针对税收协定措施制定多边协议

以应对 BEPS 问题的工作方案

序

鉴于 BEPS 的第 15 项行动计划倡导制定多边协议，以实施在 BEPS 项目过程中制定的相关措施并修订双边税收协定；

鉴于“制定用于修订双边税收协定的多边协议”的报告已经得到财政事务委员会的批准和 G20 领导人的认可，且根据该报告的结论，多边协议是合理可行的，对于此多边协议的磋商应尽快开展；

鉴于 2014 年 11 月 16 日于布里斯班通过的 G20 领导人公报认可了 BEPS 行动计划在“促进国际税收规则现代化”方面取得的显著成效；

参与 OECD–G20 BEPS 项目的各国同意在下述工作方式下设立特别小组。特别小组不是 OECD 下设的正式或非正式机构，因此对于非 OECD 成员国加入特别小组，不应被认为或是被解释成非 OECD 成员国可以参与 OECD 活动。

A. 目的

1. 特别小组旨在通过多边协议对现行双边税收协定进行修订，以确保 OECD–G20 BEPS 项目中与税收协定有关的各项措施能够得到快速实施。

B. 参与方

1. 特别小组的成员身份向所有感兴趣的国家开放。
2. 所有参与特别小组的国家被平等对待。
3. 非 OECD 国家的税收辖区可受邀作为观察员参与。
4. 有关的国际或区域性政府间组织可受邀作为观察员参与。

C. 持续时间

1. 特别小组将在 2015 年 7 月之前启动工作。
2. 特别小组将力求在 2016 年 12 月 31 日之前完成多边协议的起草，以供各国签署。
3. The term of the mandate for the Group will end upon the opening of the multilateral instrument for signature.

D. Governance

1. The Plenary of the Group is the decision-making body of the Group.

2. The Plenary is assisted by:
   a. A Bureau appointed by the Plenary of the Group, which will prepare and guide the work of the Group; and
   b. Sub-groups or existing OECD bodies, as deemed appropriate by the Plenary.

3. The Plenary of the Group shall appoint a Chair and two Vice-Chairs at its first meeting, who are also Chair and Vice Chairs of the Bureau.

4. The Group is convened under the aegis of the OECD and G20 and is served by the OECD Secretariat.

5. The functioning of the Group and its sub-groups will be governed by the OECD Rules of Procedure and the provisions of international law related to the development and conclusion of treaties.

6. The Group will provide periodic updates to the Committee on Fiscal Affairs (hereafter "the Committee") regarding progress made and will consult with the Committee and its subsidiary bodies as necessary and appropriate.

E. Funding

1. The functioning of the Group will be funded by its Members.

2. Members and Observers in the Group will be responsible for covering the costs of their participation in the work of the Group.
3. 特别小组将于多边协议开放签署时终止。

D. 治理
1. 特别小组的决策机关是特别小组的全体会议。

2. 下列部门将协助全体会议的工作：
   a. 特别小组全体会议指定的办事处协助和主持特别小组的工作；
   b. 在全体会议认为合适的情况下，特别小组下属分组或者 OECD 现行机构
3. 特别小组全体会议应在首次会议中任命一名主席和两名副主席，相关人员应同时出任办事处的主席和副主席。
4. 特别小组由 OECD 和 G20 召集，由 OECD 秘书处组织工作。
5. 特别小组及其下属分组的职能将遵循 OECD 的议事规则和与税收协定的制定、缔结有关的国际法规定。
6. 特别小组将向财政事务委员会（以下简称“委员会”）定期汇报工作进展，必要时将寻求委员会及其下属机构的意见。

E. 资金支持
1. 特别小组的成员为特别小组的运行提供资金。
2. 特别小组的成员和观察员自行负责其参与特别小组发生的成本。
INTRODUCTION

There is strong political support to eliminate BEPS. In an environment of severe fiscal consolidation and social hardship, BEPS has become a high priority for governments. BEPS relates chiefly to instances where the interaction of different tax rules leads to double non-taxation or less than single taxation. It also relates to arrangements that achieve no or low taxation by shifting profits away from the jurisdictions where those profits are generated. The OECD/G20 BEPS Project aims to address BEPS concerns in a comprehensive manner.

The current system of bilateral tax treaties focuses on the elimination of double taxation. The interaction of domestic tax systems can lead to overlaps in the exercise of taxing rights that can result in double taxation. For example, if an item of income is earned in one jurisdiction (the "source jurisdiction") by a resident of another jurisdiction (the "residence jurisdiction"), both jurisdictions may tax that income under their domestic laws. International treaties to address double taxation, many of which originated with principles developed by the League of Nations in the 1920s, aim to address these overlaps so as to minimise trade distortions and impediments to sustainable economic growth. The resulting network of more than 3000 bilateral tax treaties, based on model tax conventions, is very valuable. It ensures that there is broad consistency in the tax rules applicable to cross-border trade and investment. Countries around the world agree on the need to eliminate double taxation and to do so on the basis of agreed international rules that are clear and predictable, giving certainty to both businesses and governments.

However, some features of the current tax treaty system facilitate BEPS. The interrelationship between domestic tax laws and the international tax framework is a key pillar in supporting the growth of the global economy. However, as globalisation has changed the way business is done, the gaps and frictions that were always present in the existing bilateral tax treaties have grown more important. Existing treaty provisions are sometimes exploited, in some cases in conjunction with domestic law rules, so that large amounts of income are not subject to tax in any jurisdiction. Moreover, the existing bilateral tax treaties vary widely in their details, including when the differences are not necessary to reflect specificities in the economic relations between the two contracting states. Rather, certain differences in detail appear to be due to the fact that treaties have been negotiated over a long period of time, and in some circumstances these differences create opportunities for BEPS, which are then exploited by taxpayers.

Change is needed to eliminate the opportunities the current tax treaty system creates for double non-taxation. The BEPS Action Plan identifies treaty abuse as one of the most important sources of BEPS concerns. OECD and non-OECD government tax treaty experts agree that changes to the model tax conventions, as well as the bilateral tax treaties based on those model conventions, are required to stop or significantly reduce these abuses. A wide range of specific issues addressed in current model tax conventions, including changes to the definition of permanent establishment (PE), and improvements to dispute resolution procedures are being considered by leading tax treaty negotiators from OECD and G20 governments. These tax treaty experts have also identified the need for new model treaty provisions targeted
2014年报告——制定用于修订双边税收协定的多边协议

引言

政治上力主消除BEPS。在严峻的财政状况和社会环境下，反BEPS已成为各国政府的首要任务之一。BEPS主要源于滥用不同的税收制度导致双重不征税或少于单边征税的情况。另一种情况是利用税收安排将利润从来源国转移到低税负国。OECD/G20的BEPS项目旨在全方位地应对BEPS。

目前双边税收协定重点关注消除双重征税问题。不同国内税法体系之间的相互作用导致各国在行使征税权的过程中造成双重征税。例如，某一国（“居民国”）的居民从另一国家（“来源国”）取得一项收入，两个国家根据各自的国内法对该项所得都拥有征税权。为避免双重征税而制定的国际协定旨在处理征税权重叠问题以尽可能减少贸易的扭曲和排除经济稳定发展的障碍，一些国际协定是在20世纪二十年代国际联盟制定的国际法的基础上所形成。基于国际协定的基础上的3000多个双边税收协定构成了极为重要的协定体系。该体系确保了跨境贸易和投资活动在税收法律规定适用方面具有广泛的一致性。世界各国都认同消除双重征税的必要性，并同意在清晰的、可预测的国际税制基础上来实现，这就向商业组织和政府提供了一定的确定性。

但是，目前税收协定体系的某些特征使BEPS成为可能。国内税法和国际税法之间的相互关系是支持全球经济发展的核心支柱。但是，全球化改变了商业模式，现行双边税收协定下既存的同款和摩擦变得更为重要。纳税人有时会利用现行税收协定的条款，在某些情况下同时结合国内法规定，使得大量的所得在任何一个国家都不需交税。另外，现行双边税收协定在细节规定上不相同，有时这些差异并不一定反映出双方缔约国之间经济关系的特殊性，而另一方面，细节差异可能是由于协定的协调或隔远，而在某些情况下这些差异提供了可被纳税人利用而导出BEPS的机会。

需要做出改变来消除现行税收体系下产生的双重不征税的状况。行动计划认为税收协定滥用是导致BEPS的最重要的原因之一。OECD和非OECD成员国政府的税收协定专家同意必须对目前协定范本以及基于协定范本而制定的双边税收协定进行修改，以消除或大幅减少滥用税收协定现象。G20和OECD成员国的主要协定谈判代表正在考虑目前税收协定范本中存在的诸多具体问题，包括对常设机构（Permanent Establishment，PE）的定义和争端解决程序的改进。这些税收协定专家们还提出了有必要在协定范本中加入旨在解决双边税收协定中所存在的特定问题的条款，包括引入与混合错配安排相关的反协定滥用条款，以及反BEPS措施和税收协定间的兼容性。该工作预计于2015年完成。

双边协定的庞大数量导致更新协定体系的工作繁重且费时，限制了多方工作推进的效率。在对协定范本的修改获得各方同意之后，需要大量的时间和精力才能够把修改引到到大部分双边税收协定。事实上，一个国家协定网络的重新谈判需要数十年的时间。因此，现行的体系并不能够
at specific issues that generally were not addressed in bilateral tax treaties, including the introduction of an anti-treaty abuse provision in relation to hybrid mismatch arrangements, and the compatibility with tax treaties of certain anti-BEPS measures. The work is expected to be finalised in 2015.

The sheer number of bilateral treaties makes updates to the treaty network burdensome and time-consuming, limiting the efficiency of multilateral efforts. After any change to the model tax conventions is agreed multilaterally, it takes a substantial amount of time and resources to institute the changes in most bilateral tax treaties. Indeed, renegotiating a country’s treaty network takes decades. As a result, the current network is not well-synchronised with the model tax conventions. Since the actual treaties are many years behind the models on which they are based, any multilaterally-agreed changes to the models take a generation to implement.

In contrast the need for change is urgent, and this is both a challenge and a unique opportunity. The BEPS Action Plan was developed quickly because of political imperatives to address BEPS, and the expectation is that agreement on how to solve the problem will be implemented quickly as well. However, multilaterally-agreed changes to the model tax conventions to tackle BEPS only make the gap between the content of the model tax conventions and the content of actual tax treaties wider. To address BEPS in a reasonable timeframe, a mechanism to facilitate swifter implementation is hence required. This is challenging but at the same time creates a unique opportunity to modernise the architecture of the international tax treaty network.

A multilateral instrument can address treaty-based BEPS issues while respecting sovereign autonomy in tax matters. The concept of sovereign autonomy is a basic principle underpinning the international order and providing the foundation for the negotiation of international treaties. In tax matters, the concept of sovereignty underpins the stable tax framework within which governments have been able to facilitate arrangements that allowed for the benefits of globalisation to flow to all market economies. Governments have historically used domestic legislation and bilateral treaties to reach the appropriate balance between national sovereignty and international co-operation in this area. As BEPS results from the interactions of multiple countries’ laws and treaties, governments need to collaborate more intensively through a harmonised multilateral instrument both to prevent the tax treaty network from facilitating BEPS and to protect their tax sovereignty. Recognising the tax sovereignty concern, the report focuses on implementing treaty measures, even though a multilateral instrument could in principle also be used to express commitments to implement certain domestic law measures.

A multilateral instrument facilitates speedy action and innovation. A multilateral instrument will implement agreed treaty measures over a reasonably short period and at the same time it would preserve the bilateral nature of tax treaties. This innovative approach has at least three important advantages. First, it would help ensure that the multilateral instrument is highly targeted. Second, it would allow all existing bilateral tax treaties to be modified in a synchronised way with respect to BEPS issues, without the need to individually address each treaty within the 3000+ treaty network. Third, it responds to the political imperatives driving the BEPS Project: it allows BEPS abuses to be curtailed and governments to swiftly achieve their international tax policy goals without creating the risk of violating existing bilateral treaties that would derive from the use of unilateral and uncoordinated measures.

Overcoming traditional obstacles to swiftly implement agreed tax treaty measures requires political willingness to act. The efficiency and innovation represented by a targeted multilateral instrument does come with certain challenges. First, bilateral treaties are highly varied in their details, and there are limited precedents for modifying bilateral treaties with a multilateral instrument. Technical challenges therefore must be given careful attention. Second,
与协定范本实现有效地同步。鉴于实际的税收协定落后于其所依据的协议范本很多年，任何多边同意的范本的改动都需要一代人的时间来实现执行。

但修订的需求非常紧迫，这既是挑战也是难得的机遇。在对消除 BEPS 的急迫的政治需求下，以及在对迅速实施解决措施的期待下，BEPS 行动计划快速进展。但对税收协定范本中进行多方同意的解决 BEPS 问题相关的修订只会加大税收协定范本的内容和实际执行的税收协定之间的差距。因此，在合理的时间内应对 BEPS，需要一个能够迅速执行的机制。这具有挑战性，但同时也是宝贵国际税收协定体系更具现代化的难得机遇。

多边协议解决协定相关的 BEPS 问题的同时也体现了主权国家在税收方面的自主权。自主性自治的概念是贯穿国际秩序的基本原则，也是国际条约协商的基础。在税务事宜上，自主的概念支持着税收体系的稳定，在稳定的体系下，政府间才可能促成全球化带来的利益流向所有市场经济的安排。一直以来政府间依靠国内法和双边协定来实现国家主权和国际合作间的协调。由于 BEPS 源于不同国家国内法和协定之间的相互作用，政府需要通过“硬法”多边协议来进行更紧密的合作，以防止国际协定体系被利用于 BEPS，同时也保护了税收主权。虽然多边协议原则上亦可被用来保证国内法下某些规定的执行，考虑到税收主权问题，本报告仅关注国际协定的实施。

多边协议能够加速行动和创新。多边协议能够在合理的短时间内实施约定的税收协定措施，同时也保留了税收协定的双边协商一致的特性。该创新方式至少有三项优点。第一，其能够保证多边协议高度针对性。其次，能以现有双边税收协定在反 BEPS 方面进行同步修改，而不需要对 3000 多个协定逐一单个协定进行逐一修订。第三，其响应了政治上对 BEPS 项目的紧迫需求：减少 BEPS 滥用的情况，政府在加速实现其国际税收政策目标的同时可以避免因采用单边和不合作的方法而破坏现行双边税收协定的风险。

要克服协定措施快速实施的传统阻力，需要政治上的主动支持。具有针对性的多边协议带来效率和创新的同时，也面临着挑战。首先，双边协定之间细节上的差异极大，况且以多边协议的形式修改双边条约有先例。因此，应谨慎应对技术上的挑战。其次，即使技术性问题有解决方法，在
even when solutions to the technical issues are available, the trade-offs in terms of respecting sovereign rights, providing consistency, and achieving political acceptance from a critical mass of jurisdictions requires strong impetus at the highest political level. Meeting these challenges is necessary not only to tackle BEPS, but also to strengthen and ensure the future sustainability of the existing consensual framework to eliminate double taxation. With political will, however, even difficult treaty-based challenges can be met successfully and swiftly. The recent work on the Convention on Mutual Administrative Assistance in Tax Matters (hereafter “MAC”), which was undertaken at the direction of the G20 in connection with Leaders’ desire to address offshore tax evasion, provides one example of the impact G20 leadership can have in the international tax area.

This report concludes that a multilateral instrument is desirable and feasible, and that negotiations should be convened quickly. The present report explores the questions raised by the use of a targeted multilateral instrument to modify tax treaties, and provides a high-level analysis of both the technical (public international law and international tax law) and political issues that arise. It highlights the feasibility of a multilateral approach as the way to streamline the implementation of the BEPS Action Plan with a view to responding to the current state of urgency, and also to improve efficiency. It concludes that a multilateral instrument is desirable and feasible and it should be negotiated through an International Conference open to G20 countries, OECD members and other interested countries and convened under the aegis of the OECD and the G20. The mandate of the Conference should be limited in scope (implementing the BEPS Action Plan) and in time (no more than 2 years). The Conference could also be invited to reflect on possible further steps to continue to streamline the implementation of agreed changes to the existing model tax conventions and could make recommendations in that respect.

A recent success story: the Convention on Mutual Administrative Assistance in Tax Matters

The Convention on Mutual Administrative Assistance in Tax Matters (“Convention”) was opened for signature by the member states of the Council of Europe and the OECD in 1988, entered into force in 1995, and had only 14 signatories as of 2009. At its April 2009 London Summit the G20 Leaders called on the OECD to modernise this instrument to align it to contemporary international standards on exchange of information, and to open it to all countries, by stating in the G20 Declaration on Strengthening the Financial System that they were “committed to developing proposals, by end 2009, to make it easier for developing countries to secure the benefits of a new cooperative tax environment” (G20, 2009). A Protocol to the Convention was negotiated in 2009 and the amended Convention was presented at the annual OECD Ministerial meeting in May 2010, and the amended Convention and Protocol were opened for signature by a wide range of countries on 1st June 2011. As of 3 July 2014, 66 countries, including all G20 countries, had signed the amended Convention, and 14 jurisdictions were covered by territorial extension. The Convention – a single multilateral legal instrument – performs functions that would have otherwise required negotiating over 1800 new bilateral agreements. By means of the Convention, the G20 swiftly and successfully initiated a step change in transparency in cross-border tax matters globally.
对国家主权的尊重、一致性和从众多国家中获得政治接受这些因素之间的权衡则需要更高的政治动力。应对这些挑战不仅对消除 BEPS，而且对加强和保证现行消除双重征税的一致框架在未来的稳定性，都是必要的。有政治上的支持，再困难的税收协定的挑战也能被迅速克服。目前在 G20 指引下展开的针对单方面避税行为的纳税征管互助公约的工作，即为一个 G20 领导人影响国际税收领域的例子。

报告的结论是，多边协议是合适和可行的，且对于此多边协议的协商应尽快召开。本报告就应用针对性的多边协议来修订税收协定产生的问题展开探讨，从技术角度（国际公法和国际税法）和政治方面提供初步分析。在应对目前的紧迫形势和提高效率方面，本报告强调了以多边解决方式简化执行 BEPS 行动计划以提高效率的可行性。本报告得出结论，多边协议是合适且可行的，并且应在 G20 和 OECD 的支持下召集 G20 国家、OECD 成员国以及其他相关国家间的国际会议进行协商。会议必须范围（BEPS 行动计划）时间不超过 2 年，也可召集会议进一步简化实施现有税收协定至本修订的行动步骤，以及在这一方面提供相关建议。

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近期成功案例：税收征管互助公约


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I. A MULTILATERAL INSTRUMENT IS DESIRABLE AND FEASIBLE

A. Developing a multilateral instrument is desirable: The benefits are numerous, while burdens can be addressed or avoided

Changes to the OECD Model Tax Convention are intended to ultimately produce changes to the network of bilateral tax treaties that form a key component of the broader international tax architecture. G20 Leaders endorsed the BEPS Action Plan, and committed to take the necessary individual and collective actions in order to tackle BEPS. The 15 BEPS Action Plan deliverables span three different areas: recommendations for domestic law taking the form of best practices and model domestic rules, other reports, as well as changes to the OECD Model Tax Convention and internationally agreed guidance on implementation. Tax treaty-related issues are agreed to be a key focus of BEPS concerns. The development of a multilateral instrument to tackle these treaty-based BEPS issues first of all requires agreement on the substance of the tax treaty measures required to respond to BEPS. Working groups are making steady and important progress towards this goal. Indeed, the first outputs are being made public at the same time as this report, while other outputs are expected by 2015.

A multilateral negotiation can overcome the hurdle of cumbersome bilateral negotiations and produce important efficiency gains. Given the decades-long process for bilateral treaty negotiations, a multilateral instrument represents the only way to address treaty-based BEPS concerns in a swift and co-ordinated manner. The current network of bilateral treaties involves substantial complexity because each treaty is a legally distinct instrument, and its relationship to other bilateral treaties is undefined. As a result, lawyers, tax administrators, and courts spend a lot of energy interpreting each individual treaty, especially when treaties differ in small ways. This problem would become more severe if varied anti-BEPS measures were included in thousands of new bilateral protocols to existing treaties. The multilateral instrument will instead produce synchronised results that would save resources and improve the clarity of BEPS-related international tax treaty rules. These benefits are in addition to the simple reality that only a multilateral instrument can overcome the practical difficulties associated with trying to rapidly modify the 3000+ bilateral treaty network.

The multilateral instrument can provide developing countries with the opportunity to fully benefit from the BEPS Project. For developing countries, the practical problems that are encountered in trying to address BEPS from within the bilateral tax treaty system alone are even more relevant than for developed countries. Developing countries find it more difficult than other countries both to conclude double tax treaties, and to interest other countries in tax treaty (re)negotiation, and their tax treaty negotiation expertise is often more limited than in the governments of developed economies. A multilateral instrument therefore offers the best opportunity to ensure that developing countries reap the benefits of multilateral efforts to tackle BEPS. In a multilateral negotiation, similarly-minded developing governments may co-operate, pooling their expertise to be efficacious in the negotiating process.

Some issues are much easier to address multilaterally than in bilateral instruments. The bilateral treaty architecture was not originally designed to address high levels of factor mobility and global value chains. For example, globalisation substantially increases the need to resolve multi-country tax disputes. Although competent authorities within tax administrations have expressed interest in the possibility of developing a multilateral mutual agreement procedure (MAP) to resolve such multi-country disputes, some countries foresee legal constraints in the absence of a hard law instrument authorising multilateral MAP. Other countries do not believe they can use MAP to resolve cases that touch on issues not explicitly addressed in their existing
1. 多边协议合适且可行

A. 制定多边协议是合适的：具备许多益处，同时困难能够被应对或消除

对经合组织协定本的修订旨在最终改变作为更广泛的国际税收制度结构的主要组成部分的双边税收协定。G20 的领导人通过了 BEPS 行动计划，并决定投入必要的人员和联合行动来消除 BEPS。这 15 个行动计划涉及三个不同领域：对国内法的建议，形式包括典型优秀实践，国内法合规例，其他报告，以及 OECD 协定本及国际协定的执行方案指间的修订。各方同意税收协定相关的问题是消除 BEPS 应关注的重点。制定多边协议来消除基于税收协定的 BEPS 问题，应首先需要在应对 BEPS 的税收协定的内容方面达成一致。工作组正朝着这个目标稳步前进并取得重要进展。事实上，第一批成果已与本报告同时公布，其他成果也预计于 2015 年公布。

多边协商能够避免繁琐的逐对协商，产生更重要的效率益处。鉴于双边税收协定要经历几十年漫长谈判过程，多边协议代表了一种能够快速且协调地解决基于税收协定的 BEPS 问题的方式。目前的双边税收协定体系存在着巨大的复杂性，每个协定都是一个法律意义上的独立工具，这与其他协定间的相互作用并不明确。因此，税务、税收征管者和法庭需要花费更多精力去逐个解决每个协定，特别是在不同协定之间的区别甚小的情况下。如果单 BEPS 的条款以新的议定书的形式在若干现行的协定中做出规定也各不相同的话，将加剧上述问题。多边协议可以起到同步更新的效果，从而节约了资源并让 BEPS 相关的国际税收规定更加的清晰。此外，基本的框架为具有多边协议才能够克服快速修订 3000 多个双边税收协定的实践困难。

多边协议可以为发展中国家提供在 BEPS 项目中利益最大化的机会。相比于发达国家，发展中国家有通过单独的努力在双边税收条约体系中解决 BEPS 问题将会遇到更多的实务障碍，发展中国家与其他国家更难达成双边税收协定。也难以吸引其他国家参与税收协定的（重新）谈判，且相比于发达国家，发展中国家的税收协定谈判的专门知识有限。因此，多边协议为保证发展中国家从消除 BEPS 的多边努力中获得最大益处而提供了最佳机会。在多边谈判中，持相似观点的发展中国家会合作，且集中利用他们具备的专门知识以进行有效的谈判。

某些问题在多边协议中阐释比在双边工具中更容易。双边协定的结构原本并非设计来解决复杂性高的流动性和全球价值链相关的协定。比如，全球化极大加剧解决涉及多国的税务纠纷的需求。虽然主管税务行政机构表示有兴趣制定多边相互协商程序（Mutual Agreement Procedure，MAP）用以解决这种多国纠纷，一些国家预计多边 MAP 在缺乏“硬法”工具授权的情况下，在法律效力上将会受限。其他国家认为，在缺乏国际法律工具授权的情况下，MAP 解决不了涉及现存双
bilateral tax treaties in the absence of an international law instrument that provides that authority. These and other legal obstacles that arise in implementing multilateral MAP can easily be addressed in the context of the multilateral instrument.

A multilateral instrument can increase the consistency and help ensure the continued reliability of the international tax treaty network, providing additional certainty for business. In contrast to amendments to thousands of bilateral tax treaties, a targeted multilateral instrument to address BEPS would be much more likely to produce consistent results. The multilateral nature of the instrument would focus the attention of a large number of highly qualified treaty negotiators on a single document that could incorporate the language deemed most appropriate by all concerned countries. In addition, having a single text, instead of thousands of similar but slightly varying texts, would be more likely to produce consistent interpretation across jurisdictional boundaries. As a result, a common international understanding would develop about the meaning of the text of the provisions of the multilateral instrument. By addressing a number of contested questions surrounding international tax rules in a definitive way, a multilateral instrument can restore clarity and ensure future certainty for the status of a variety of important rules that business relies upon to be able to invest with confidence cross-border.

Flexibility, respect for bilateral relations, and a targeted scope are key to success. The benefits of swift implementation, improved consistency, certainty, and efficiency, can only be achieved if bilateral specificities and tax sovereignty are fully respected, so that the process does not bog down or involve too few countries. Allowing countries to tailor their commitment under the instrument in pre-defined cases can help address these concerns. On the other hand, in order to feel comfortable moving ahead in tackling BEPS, countries will want assurance that other countries are tackling BEPS simultaneously. Parties could therefore commit to a core set of provisions as part of a multilateral instrument, but then have the possibility to opt-out, opt-in or choose between alternative – and clearly delineated – provisions with respect to other issues covered by the instrument. Negotiations would thereby accommodate bilateral specificities, reinforce governmental policy goals, and reassert tax sovereignty in the face of globalisation.

At the same time, a level playing field will require broad participation. Some provisions of the treaty-based portion of the BEPS Project require broad participation in order to successfully address BEPS concerns. Thus, to ensure a level playing field and fairly shared tax burdens, flexibility and respect for bilateral relations will need to be balanced against core commitments that reflect new international standards that countries are urged to meet and for which the multilateral instrument is a facilitative tool.

B. Developing a multilateral instrument is feasible: Legal mechanisms are available to achieve a balanced instrument that addresses the technical and political challenges

The technical legal challenges that arise in modifying the international tax treaty architecture by means of a multilateral instrument will require careful attention. Nevertheless, an analysis of precedents in other areas of international law and the specifics of various proposed changes to the model tax conventions illustrate that developing a multilateral instrument to rapidly implement agreed changes is completely feasible from a legal point of view.

The multilateral instrument would coexist with the existing bilateral tax treaty network. The most promising approach for pursuing the goal of a multilateral instrument to consistently modify the existing, varied, 3000+ tax treaty architecture involves developing a multilateral instrument that would co-exist with bilateral tax treaties. Like existing tax treaties, this instrument would be governed by international law and would be legally binding on the parties. A multilateral instrument will modify a limited number of provisions common to most
边关税协定中没有明确阐述的问题。上述以及其他多边 MAP 的执行与确定的法律上的障碍能够被多边协议轻易克服。

多边协议能够提高一致性并保证国际税收协定体系持续的可靠性，为商业活动提供确定性。与其制定数千的双边税收协定的修正案，利用一项有针对性的多边协议来解决 BEPS 问题将可能获得一致性的结果。该工具的多边性质能够将大量高复杂的协定谈判专家的注意力集中聚焦在单项文件上，并且采用所有涉及国家所普遍认同的法律。此外，使用单一文本相比数千类似但存有略微差异的文件更有可能达成各国在文本解读上的一致性。因此，对多边协议下的条款文本的含义会在国际形成共识。通过对围绕国际条约的争议性的问题进行明确，多边协议能够对相关问题进行明确并保留许多重要商业条款在未来适用的确定性，令依赖这些规定的商业活动对跨境投资更有信心。

灵活性，对双边关系的尊重，以及对针对性是成功的关键。只有在双边国家的特性以及税收主权被充分尊重的前提下，才能从快速执行，提高一致协调性和效率中获利，以便保证流程不会被拖延或避免出现仅有极少数国家参与的情况。允许各国在多边协议中率先设定好的情况下约定特定的条款有助于解决上述问题。另一方面，各国都希望确保其他国家同时参与打击 BEPS 的行动，这样做国才会乐意继续投入到该行动中。各方在多边协议核心条款方面达成一致，在此基础下可以就工具涉及的其他问题上选择性加入，退出或者选择适用替代且界定明确的条款。多边协商可调节双边的特异性，强化政府目标，并在全球化背景下重申税收主权。

同时，公平的竞争环境要求广泛的参与度。BEPS 项目中一些基于协定的条款要求广泛的参与度，只有这样才能成功解决 BEPS 问题。因此，为保证公平的竞争环境以及平等税负分配，反映国际指南核心的原则的条款（多边协议在此可作为一项辅助性工具），需要与灵活性和对双边关系的尊重进行权衡。

B. 制定多边协议是可行的：法律机制可对制定解决技术上和政治上挑战的平衡性工具提供保障。

以多边协议的方式改变国际税收协定结构时遇到的法律技术挑战需要慎重处理。然而，对国际法其他领域的先例以及对协议范文进行修订的分析表明，从法律的角度来说制定多边协议来加速实施协商同意的修订是完全可行的。

多边协议与现行的双边税收协定体系可以共存。最有希望通过多边协议达到统一税收现有超过 3000 个不同的税收协定体系的目标的方法，涉及制定能够与双边税收协定共存的多边协议，和现行税收协定一致，该工具受到国际法的规范且对于缔约方具有法律约束力。多边协议能够修改现行多数双边协定中为数不多的共有的条款，并且针对未包含这些条款的协定。多边协议可以新增特别为反 BEPS 规定的条款。多边协议亦可明确 BEPS 项目中其他反 BEPS 措施与税收协定的兼容性问题。将有一份解释性报告来阐释多边协议所含条款的实施问题。

这样的方法能够保证多边协议具有高针对性和高效率。制定能够与双边税收协定共存的多边协议被认为是比其他国家更加合适的途径，因为该多边协议更有效率且更具针对性。其他被考量的方式包括：(i) 使用能够完全取代双边税收协定的“独立工具”来管理所有参与国之间的关
existing bilateral treaties, and would, for those treaties that do not already have such provisions, add new provisions specifically designed to counter BEPS. It could also clarify the compatibility with tax treaties of other anti-BEPS measures developed in the course of the BEPS Project. The multilateral instrument could be accompanied by an explanatory report to facilitate the implementation of the provisions contained therein.

This approach will ensure that the multilateral instrument is highly targeted and efficient. A multilateral instrument that coexists with bilateral tax treaties was identified to be more appropriate than other approaches because it is more efficient and more targeted. Other options that were evaluated included (1) the use of a “self-standing instrument” that would wholly supersede bilateral tax treaties, governing the relationship between all the parties, whether or not they have concluded bilateral tax treaties amongst themselves and (2) an instrument whose sole purpose would be to operate like a bundle of “amending protocols”, precisely amending the varying language of each of the 3000+ tax treaties. A “self-standing instrument” that would wholly supersede bilateral tax treaties was viewed to be overbroad given the importance of bilateral relations in international tax affairs and the importance of preserving tax sovereignty. A bundle of “amending protocols” was viewed as less appealing than a coexisting multilateral instrument because it would be both more technically complex and less efficient. As a result, this approach was viewed as being too cumbersome and time consuming to satisfy the central purpose of the multilateral instrument, which is to implement treaty-related responses to BEPS quickly.

A multilateral instrument would follow established negotiating processes, and ratification would require conventional domestic procedures, pursuant to national laws. The intent of this multilateral instrument would be to ensure the effective and efficient implementation of the outputs of the BEPS Project that bear a relationship to the operation of tax treaties. Once the implications of this innovative solution have been fully considered and addressed, an International Conference would negotiate the content and actual text of the multilateral instrument, which would then be subject to the regular ratification procedures by each party. Therefore, this multilateral instrument would follow traditional negotiating processes, and ratification would take place according to national laws.

The relationship between parties to a multilateral instrument that are not parties to a bilateral tax treaty between themselves generally would not be affected. In some instances, parties to a multilateral instrument will not yet have concluded a bilateral tax treaty between themselves. In general, a multilateral instrument would only govern the relationship between parties that have concluded bilateral tax treaties amongst themselves. One exception to this general rule could be a multilateral dispute resolution mechanism which operates among all parties to the multilateral instrument, including in cases where certain parties to the instrument lack bilateral treaty relationships with one another. A separate question to be examined by the treaty negotiators at the International Conference is whether this multilateral instrument would impose any obligation on the parties to the instrument with respect to a situation in which two States conclude a bilateral tax treaty covering the same issue for the first time at a date after they each become parties to the instrument. From a legal point of view the relevant provisions could be crafted to apply in such a case, and therefore a decision will have to be taken at the political level.

Technical challenges arising from the interaction between a multilateral instrument and bilateral tax treaties can be addressed.

Variations in scope between similar provisions of existing bilateral treaties can be successfully resolved. The prospective treaty outputs of the BEPS Project will take into account current best practices in tax treaty negotiation and therefore the provisions of a multilateral instrument could, to a certain extent, overlap with certain provisions found in some
系，无论这些国家之间是否有签订双边税收协定，以及（ii）唯一目的是发挥类似于一系列“修订
议定书”集合作用的工具，精确地对 5000 多个税收协定中不同语言表达进行逐一修订。考虑到双
边关系在国际税收事务中的重要性以及国家税收主权的维护，完全取代双边税收协定的独立工具
被认为过于宽泛。一系列“修订议定书”的集合被认为与双边税收协定共存的多边协议相比缺乏
吸引力，主要由于其在技术执行上更为复杂也更缺乏效率。因此，这种方法被认为过于烦琐和费
时，不能满足利用多边协议快速运用协定来反 BEPS 的主要目的。

多边协议将会遵从已经形成的协商程序，且根据相关国家法律完成生效所必需的国内法
程序。该多边协议的目的在于保障将税收协定运作有关的 BEPS 项目成果被有效且高效地执
行。一旦此创新解决方案的影响得到充分的考虑和理解，将举行国际会议对多边协议的内容和切
实文本进行协商，紧接着协商结果将会在完成正式生效所必需的各自的国内法流程。因此，多
边协议的达成将会遵从传统的协商程序，并将根据各国法律完成生效所必需的法律程序。

多边协议的参与国家如果彼此间未签订双边税收协定将基本不受影响。在某些情况下，多
边协议的参与国家彼此间未签订双边税收协定，一般情况下，多边协议仅适用于那些彼此间签订了
双边税收协定的国家之间的关系。在所有多边协议的参与者间签订的多边争端解决机制，包括
在多边协议的一些参与国之间没有双边税收协定等情况下运行此机制，属于例外情况。另一项在
国际会议中被协商方提出讨论的问题是，在双方成为多边协议参与国之后首次遇到税务议题达
成双边税收协定，多边协议是否会影响到参与方施加额外的义务。从法律的角度来说，可以修改相
关条款以使其被应用，因此，政治层面上必须做出相应的决策。

多边协议和双边税收协定相互作用下产生的技术挑战将能够被解决。

现行双边税收协定中相似条款的不同适用范围可以被成功应对。BEPS 项目下对协定的修改提
议将考虑运用协定条款协商中的最佳实践，因此在某种程度上，多边协商的条款可能会与一
些双边税收协定的条款重合。新的多边协商条款与现行双边协定中就相同的事宜全部或部
分所达成的类似条款之间可能形成潜在的冲突。
bilateral tax treaties. Potential conflicts may arise from the interaction between new multilaterally agreed provisions and similar provisions included in some existing bilateral treaties that fully or partly cover the same subject matter. Such cases raise questions as to whether existing bilateral provisions incorporated in existing tax treaties should remain fully or partially applicable alongside a multilaterally-agreed provision designed to address the same basic questions, and if so under what circumstances and to what extent. From a legal standpoint, the interaction between multilaterally agreed provisions and similar provisions of existing bilateral treaties could be resolved through the inclusion of specific “compatibility” clauses (or “primacy” clauses) in the multilateral instrument.

Variations in the wording of similar provisions of existing bilateral treaties can be addressed through superseding language in a multilateral instrument. Introducing multilaterally agreed changes through a multilateral instrument may raise technical challenges due to variations in the wording of existing bilateral tax treaties. Whether this is a real issue will depend largely on the extent to which each treaty-based output of the BEPS Project is a standalone measure which easily complements existing treaties, or relies heavily on existing concepts that are already defined in model tax conventions. If a given output of the BEPS Project relies on an existing concept, and those concepts do not appear, or have an alternative meaning, in some bilateral treaties, a multilateral instrument will be unable to assume uniform usage of the Model Tax Convention concept. However, negotiators of a multilateral instrument can address this issue by ensuring that the instrument defines its own terms when necessary, and does so in a way that is compatible with the range of existing bilateral treaties. Similarly, specifying the provision of existing bilateral treaties that is being addressed in a multilateral instrument through general description rather than specific textual cross-references can ensure that minor differences in the wording of existing tax treaty provisions do not pose an obstacle for uniform effect and implementation of an agreed provision in a multilateral instrument. The explanatory report to this multilateral instrument can give examples and further ensure consistency of understanding regarding the interaction of a multilateral instrument and existing bilateral tax treaties.

Addressing variations in the numbering of provisions simply requires careful drafting. Multilaterally agreed measures being developed in the course of the BEPS Project will likely use numerical cross-references to existing provisions of the model conventions as a shorthand to give technical precision to the treaty-based proposals to address BEPS. However, the numerical cross-references in most treaties do not align precisely with the numbering of the model conventions. As a result, model bilateral treaty provision cross-references cannot be transposed directly into a multilateral instrument. In principle, this potential issue can be addressed by a multilateral instrument that avoids explicit numerical cross-references to articles of the model tax conventions or specific articles of existing bilateral treaties, and instead clearly cross-references the relevant subject matter of bilateral treaties with appropriate language. Practical issues associated with this approach are likely to be identified and resolved in the context of negotiation of the multilateral instrument.

The timelines for signature and entry into force can be calibrated for flexibility. In particular, it would be possible to set up different dates for the entry into force of the instrument for the parties depending on the provisions of the instrument (e.g. some provisions could enter into force at the start of a new tax year while other could enter into force at the date of ratification). In addition, express mechanisms and procedures could be incorporated into a multilateral instrument to ensure expeditious amendment procedures in the future. These mechanisms would be consistent with traditional negotiating processes, and ratification would require conventional domestic procedures.

Solutions for other technical issues, such as questions of language and translation, are readily available. Language issues may arise with respect to the modification of bilateral tax
这些情况导致了下述问题，在现行税收协定中已经存在的条款可否全部或部分与用以解决相同问题的多边条款同时适用，如果是的话，在什么情况下应该适用，适用到何种程度？从法律的角度来说，多边协商的条款和现行双边条约存在类似条款的情况下，能够通过引入特定的“兼容性”条款（或“首要”条款）来解决。

现行双边条约中类似条款用语间的差异可以被多边协议中的优先条款来解决。通过多边协议引入多边协商一致的修订可能会因为现行双边税收协定的用语差异而导致技术问题的产生。上述问题是否会产生现实，很大程度上取决于BEPS项目中对协定的修订意见本身是否独立且能对现行协定内容的补充，抑或是完全依赖于税收协定规定的既存概念。若BEPS项目成果依赖于既存概念，且在一些双边协定中这些概念并未出现，或者其他的解释，多边协定将无法统一采用税收协定规定的概念。但是，谈判代表应确保多边协议在必要时可自行定义概念以解决此问题，如果这么做，须与现行双边协定互不冲突。同样的，则用一般性文字来阐述多边协议所讨论的协定条款，而不是在文字上进行交叉引用。这样才能保证现行税收协定文字上的微小差异不会对多边协议中约定条款的实施效果与一致性造成障碍。多边协议的解释报告会给出参考示例，将进一步保证在理解多边协议和现有双边税收协定相互作用的一致性。

解决条款编号不一致的问题需仔细考虑即可。经多方同意的BEPS项目下发展的措施有可能会交叉引用现行协定范本中条款的编号，以保证基于协定的反BEPS提议在技术上的精确性。但是，大多数双边协定中编号不能够与协定范本的编号精确匹配。因此，双边协定范本的条款的交叉引用不能够直接调入多边协议。原则上，这个潜在的问题可以通过适当的修正，清楚地交叉引用双边税收协定中的具体条款来解决。而避免引用具体税收协定范本条款的编号或引用现行双边协定的条款。与多边协议相关的实务问题可能会在多边协议的谈判中被发现和解决。

签署和生效的具体时间安排可以进行适当而灵活的调整。特别是，可以根据工具的条款设定不同的生效日期（例如，一些条款可以在新税收年度开始的时候生效，同时其他条款可以于正式批准日起生效）。此外，明确的机制和程序将被加入多边协议的规定以保证未来便捷的修改程序。这些机制将与传统的协商程序协调一致，并在完成国内法定的生效程序后生效。

其他技术问题，比如译种的选择和翻译，比较容易找到解决方法，在修订双边税收协定的过程中会产生适用语种选择的问题，有些需要修订的协定采用的语言和多边协议的语言不同。
treaties authenticated in languages different from the authenticated language(s) of the multilateral instrument. Drafting a multilateral instrument in a number of languages would increase its cost, the risk of conflict between versions in different languages and practical challenges in its administration. This question has arisen in other areas of international law, and precedents support various potential solutions.

In general, a flexible approach will be paramount for the multilateral instrument. As is reflected in the existing network of bilateral tax treaties, parties to a multilateral instrument may have tax policies that differ from one another and could not be harmonised amongst all the parties to the instrument. They may not be ready to accept the same precise commitments vis-à-vis all other parties. One of the main challenges for negotiators of a multilateral instrument will therefore be to ensure flexibility regarding the extent of the rights and obligations established by the treaty vis-à-vis all the other parties, as well as the level of commitments towards certain parties, while at the same time maintaining consistency, in order to create a level playing field, and transparency, in order to provide certainty.

There are ample legal means for providing flexibility to modulate, within agreed boundaries, parties' commitments. It is possible for a multilateral instrument to allow for the tailoring of the level of certain commitments towards all the other parties and/or depending on the partner country. There are a number of tools to ensure flexibility and a number of relevant precedents in this regard. It should be recognised that some provisions may require consistent adoption among the parties to a multilateral instrument for reasons of technical administrability.

The relationship with other multilateral instruments should be closely examined. Once the work on the actual measures is completed, the relationship of a multilateral instrument with European Union (EU) law and other relevant multilateral agreements, e.g. regional tax treaties such as the Nordic tax treaty, will also need to be addressed.

Negotiation of the multilateral instrument must be speedy to avoid uncertainty. It is quite important for measures countering BEPS to be agreed and put in place quickly, so that business may adjust to the new reality and continue to support growth, create jobs, and foster innovation. At the same time, it is worth underlining that putting some issues within a multilateral instrument could in principle slow the ability to address BEPS, by extending the timetable for responding to other parts of the BEPS agenda. In this context, a targeted multilateral instrument with a well-defined scope and a precise timetable for negotiation is key.

The BEPS Project is intended to result in shared principles to shore up the clarity and predictability of the tax treatment of cross-border activities. Once bilateral tax treaties are modified through a multilateral instrument, it will be important to ensure clarity so that the interaction between the multilateral instrument and bilateral tax treaties is clearly outlined. One of the challenges related to the development of a flexible multilateral instrument involves ensuring that mechanisms and procedures are developed and put in place to achieve full transparency. From a legal standpoint, a number of mechanisms are available, such as the publication of versions of bilateral tax treaties that also include the relevant provisions of the multilateral instrument, a system of notifications deposited by pairs of parties for permitted opt-outs or opt-ins, etc.

Mechanisms to resolve the technical challenges that might arise from the use of a multilateral instrument, and relevant precedents in other areas of international law, are described in more detail in the annex to this report. An informal group of eminent experts in tax and public international law was gathered in September 2013 to work with the OECD Secretariat on an analysis of the issues arising from the development of a multilateral instrument. The Secretariat developed the technical annex to this report: A toolbox for a multilateral instrument for the swift implementation of BEPS measures based on input received
以多种不同的语言起草多边协议会增加成本，且不同语言版本之间会产生冲突的风险，也为实践中的管理带来挑战。这个问题也出现在国际法中的其他领域，存在的先例提供了不同潜在的解决方法。

总的来说，最重要的是多边协议应具有灵活性。正如现有双边税收协定体系中所体现，多边协议的参与国间的税收政策可能不同，且不可能在所有参与方间达成一致。有些国家可能不愿意给予所有其他参与国一样的税收待遇。因此对于多边协议的谈判者，其主要的挑战是保证与其他方签署的税收协定中权利和义务的灵活性程度，以及在对某些参与国的税收待遇方面的灵活性程度。同时，也要保持一致协调性，以创造公平和透明的环境来提供确定性。

有足够的法律手段来保证在约定的范围内调整参与国给予税收待遇方面的灵活性。在多边协议下，参与国可以针对其他参与国以及/或不同的参与国给予不同程度税收待遇承诺。有许多的工具可被用来保证灵活性，且在这方面也有很多的先例。必须意识到，基于技术原因一些条款须在多边协议参与国中得到一致的采纳。

与其他多边协议的关系需要被仔细考察，一旦实际操作的工作完成，多边协议和欧盟法律，以及其他多边协议的关系，如欧多国化税收协定这样的地区间税收协定，也需要被解决。

多边协议需要快速协商才能避免不确定性。在反 BEPS 措施上达成一致并快速进入实施是非常重要的，这样商业活动可以保持的现实状况进行调整并继续支持经济增长、创造就业机会，以及培养创新精神。同时，值得注意的是如将一些问题融入多边协议中，可能在原则上延迟 BEPS 问题的解决，因为 BEPS 议题的其他部分的讨论时间表会被延长。在这一背景下，对多边协议设立有针对性的范围和协商的时间表是关键。

BEPS 项目旨在达成用来支持跨境活动税务处理的明确性和可预测性的通用原则。一旦双边税收协定被多边协议修改，如何将多边协议和双边税收协定之间的相互关系进行清晰地表述，这至关重要。制定灵活的多边协议的挑战之一是保证相关运行机制和程序的设计和运用可以完全实现透明化。从法律的角度，一些机制可以被运用，如包括在制定多边协议相关条款的双边税收协定各个版本，以及针对参与者选择性加入或退出的退出程序等。

本报告的附录详细地描述了用以解决多边协议使用过程中可能产生的技术难题的相关机制，和其他国际法领域相关先例。2013 年 9 月，一些非正式组织的税务和国际法方面的杰出专家与 OECD 秘书处共同就制定多边协议可能产生的问题进行分析。在这些专家的帮助下，秘书处得以撰写出本报告有关技术方面的附录用于反 BEPS 倡议迅速实施的多边协议参考工具箱。
from these experts. It provides illustrative solutions to potential issues lying at the interstices of international tax law and public international law and how they could be successfully addressed by a multilateral instrument.

Note

In the absence of bilateral treaty relationships between all of the parties, a number of governments are of the view that a multilateral MAP or advance pricing agreement (APA) would only be possible where the multilateral instrument itself contains a specific multilateral MAP provision as well as an exchange of information provision that would permit taxpayer information to be exchanged between all the parties (assuming there is not some other basis for exchange of information between the parties, such as the MAC or a bilateral Tax Information Exchange Agreement).

2. THE NATURE OF THE TREATY-RELATED BEPS MEASURES WILL FACILITATE THE CONCLUSION OF A TARGETED MULTILATERAL INSTRUMENT, WHICH COULD BE FURTHER EXPANDED AT A LATER DATE

The multilateral instrument provides an innovative approach to address the rapidly evolving nature of the global economy and the need to adapt international rules quickly. Changes to the OECD Model Tax Convention are intended to produce changes to the network of bilateral tax treaties that forms a key component of the broader international tax architecture. This is, for example, the case for the introduction of an anti-treaty abuse provision, changes to the definition of PE, improvements to dispute resolution procedures, and the introduction of treaty provisions in relation to hybrid mismatch arrangements. It may also include provisions that clarify the relationship with double tax treaties of special measures that aim to counter abuses. As outlined above, the main objective of a multilateral instrument would be to modify existing bilateral tax treaties, in a synchronised and efficient manner, to implement treaty measures developed in the course of the BEPS Project, without a need to individually renegotiate each treaty within the 3000+ treaty network.

Some of the measures developed in the BEPS Project are multilateral in nature. A number of treaty-based outputs of the BEPS Project can be drafted as stand-alone measures that complement and co-exist with bilateral tax treaties. These provisions can be directly implemented without the need to take bilateral specificities into account. Indeed, some provisions would be much more effective if implemented through a multilateral instrument. The paragraphs below note a few potential provisions that are multilateral in nature and which could be introduced by a multilateral instrument.

Multilateral MAP: as highlighted above in section 1 of this report, there is merit in developing a truly multilateral MAP if the goal is to resolve multi-country disputes. Such a provision would enable MAP consultation with the competent authority of all parties to a multilateral instrument that are concerned with a case involving a taxpayer active in many
该附件对存在于国际税法和国际公法之间的潜在问题提供了具体解决方式，并阐述了如何使用多边协议来解决这些问题。

注释

在各方不存在双边协定关系的情况下，一些国家政府认为，只有在多边协议本身包含规定多边相互协商程序的特定条款，以及包括允许纳税人信息在所有各方进行交换的信息交换条款时，才能在各方之间进行信息交换的其他依据，比如IMAC，或者双边税收信息交换协议，一般多边相互协商程序或者预约定价协议才是可行的。

2. 与协定相关的 BEPS 措施的特性有助于达成具有针对性的多边协议，也可以让多边协议在制定之后得到进一步拓展

多边协议为应对全球经济的快速变化及快速更新国际规则以适应变化的需求提供了创新的解决方法。对 OECD 税收协定范本的修订旨在改变作为更广泛的国际税收制度结构主要组成部分的双边税收协定网络。比如，协定适用条款的制定，对 PE 定义的修订、对争端解决机制的改善，以及混合错配安排相关的税收协定条款的制定。多边协议也可设立用来阐明其与双边税收协定中相关反滥用条款之间的关系的条款。如上所述，多边协议的主要目标在于，通过有效且同步的方式修订现行双边税收协定，在不需要对 3000 多个税收协定逐一重新谈判的前提下，实施 BEPS 项目中制定出的协定相关措施。

在 BEPS 项目中制定出的一些措施具有多边性。BEPS 项目中制定出的部分基于协定的措施，可以起草为独立条款，其可以对双边税收协定进行补充并与双边协定共同存在。这些条款可不考虑双边特性而直接被执行。事实上，一些条款通过多边协议来执行将会更有效率。以下是一些具有多边性，可以包含在多边协议中的潜在条款。

多边 MAP：如本报告上述第一部分所指出，如果以解决多国争端为目的，则制定真正的多边 MAP 将具有很大优势。在某纳税人与多国活动的情况下，该条款能够向所有相关多边协议参与国的主管机关启动 MAP 进行咨询。为了在推进反 BEPS 之后的环境下提供确定性和争端解决方案。
jurisdictions. To provide certainty and resolution of disputes in the post-BEPS environment, such a provision would further provide for arbitration where the competent authorities are unable to resolve the case by mutual agreement.

**Addressing dual-residence structures**: although dual-residence for business entities is relatively rare, an increasing number of BEPS strategies involve dual-resident companies. Given the risk of abuse arising from the use of these structures, countries may conclude that it is better to address dual-residence situations on a case-by-case basis in order to deter aggressive tax planning that facilitates BEPS. However, this simple anti-abuse measure would be most effective if adopted consistently across the existing bilateral tax treaty network.

**Addressing transparent entities in the context of hybrid mismatch arrangements**: hybrid mismatch arrangements often lead to “double non-taxation” that may not be intended by either country, or to unintended long-term tax deferral. It is difficult to determine unequivocally which individual country has lost tax revenue under such arrangements, but they often impact negatively on tax revenues, and also undermine transparency and fairness. Addressing hybrid mismatch arrangements comprehensively requires changes to domestic law. Nevertheless, a coherent policy response that also avoids double taxation would be facilitated — both at the domestic level and at the multilateral level — by consistently modifying existing tax treaties so that the eligibility for tax treaty benefits of payments made to entities in another jurisdiction is determined based on whether the payment is considered to be income of a resident for purposes of the tax law of the jurisdiction of residence of the payee.

**Addressing “triangular” cases involving PEs in third states**: so-called triangular cases can arise where income of a tax treaty resident is attributed by the country of residence to a PE in a third State and exempt from tax in the residence State, often together with low taxation in the State of the PE. Bilateral treaties can provide rules that partially address such cases, but comprehensively addressing the problem requires incorporating a solution into all of a country’s tax treaties. Thus, a multilateral instrument represents the most efficient mechanism for action.

**Addressing Treaty Abuse**: there are a number of arrangements through which a person who is not a resident of a treaty country may inappropriately obtain the tax benefits that a bilateral tax treaty is intended to provide on a reciprocal basis to appropriate claimants. A multilateral instrument could incorporate approaches to prevent the granting of treaty benefits in inappropriate circumstances.

**Some tax treaty provisions that may implicate BEPS concerns are bilateral in nature, and for these provisions flexibility can be provided within certain boundaries**: Some treaty outputs of the BEPS Project may need to reflect specificities in the economic relations and/or in existing bilateral tax treaties between pairs of parties. For instance, a multilaterally agreed provision which introduces changes to the definition of PE may need to provide for some flexibility to tailor the level of commitment towards all the other parties and/or depending on the partner country. At the same time, flexibility has to be within certain boundaries to ensure consistency and administrative feasibility. Generally, it will be important to determine a set of core provisions to which all parties to a multilateral instrument will have to adhere to ensure a consistent and internally coherent approach to addressing treaty-related BEPS issues.

**The precise content of a multilateral instrument is yet to be defined but the sense of direction is clear**: OECD and G20 governments are vigorously working towards agreement on substantive treaty-based measures to counter BEPS. Although the final outputs in all areas are not expected until 2015, discussions indicate the need for substantial changes to model treaties and a corollary desire to speedily implement those changes into bilateral tax treaties. Indeed, other reports made available to the G20 at the same time as this report already provide
该条款将进一步规定仲裁程序来对主管机关无法通过双方协定解决的案件。

应对双重居民身份的架构：虽然复杂背景下的双重居民身份情况较为少见，越来越多的BEPS策略涉及具有双重居民身份的公司。鉴于利用双重身份结构逃避税收的风险，各国可能认为最好对双重身份案例进行个案分析，以防止导致BEPS的激进的税务筹划。但是，这样简单的反滥用措施只有在被各方双边税收协定中普遍一致地适用时，才能发挥最大效果。

应对混合错配安排中的穿透实体：混合错配安排通常会导致各国都不希望出现的“双重不征税”或税款长期逃逸。很难明确哪个国家会由于此种税收安排而流失税源，但是税收收入通常都会受到负面影响，并且在无法补救影响和公平。全方位地应对和解决混合错配安排则需要对国内法进行修改。然而，对现行税收协定进行一致的修订（支付给另一方国家的收据是否与该笔收入所在国的税收是否属于该国民间取得的收入），将有助于税收政策反应的连贯性（无论国内或是否多边层面），避免双重征税的效果也会加强。

应对涉及在第三国构成常设机构的“三角”案例：所谓三角案例，是指税收协定下的收或收入居民被其所属居民国归属于位于第三国的常设机构，且该项收入在该居民国免于征税，而通常此类常设机构的所在国是一个低税率国家。双边协定的规定可以部分解决这个难题，但是只有将解决方法融入所有国家签订的税收协定里面，才能全面解决此类问题。因此，多边协议是最有效的行动机制。

应对协定滥用问题：通过一些税收安排，非税收协定缔约国的居民可以获得某税收协定待遇。而该协定互惠待遇旨在仅适用于那些有资格的申请人。多边协议可以规定解决方式来防止税收协定待遇在不恰当的情况下被授予。

一些涉及BEPS的税收协定条款具有双边性，在一定范围内这些条款可灵活适用。BEPS项目下与税收协定相关的成果，需要反映相关国之间的经济关系和/或现行协定缔约方之间税收协定中的特殊性。例如，在修订PE概念的多边协议条款时，需要更多考虑国与国之间税收协定和/或其他不同国之间税收协定在提供一定灵活性，同时，必须在一定范围内适用灵活性，以保证一致性和管理的可行性。一般来说，应制定各方参与国际税收体系的一系列核心条款，以保证在应税税收协定相关的BEPS问题时适用一致且灵活的处理方式。

多边协议的具体内容有待确定，但是方向明确。G20和OECD政府正在努力协商制定有关的反BEPS措施，并力求达成一致。虽然所有领域最终成果直到2015年才能完成，但是各国的讨论体现了对协定范围内大量修正的需求以及迅速适用到双边税收协定的共同愿望。事实上，与本报告同时，其他国家也已经与G20、提出协定相关领域的多项修订建议。多边协议还有助于对更大范围内BEPS相关问题进行协调。比如，多边协议包含条款规定对税收征管中获取的信息保密，有助于执行分国家报告的工作。类似地，与成本费用分摊相关的双重征税和双重不征税问题同样在利息费用分摊的情况下值得注意。可以制定新的争议解决机制，以进一步防止针对BEPS的单边或不合作的行动计划的双重征税。

以多边协议的方式执行BEPS成果是一项有效且创新的解决方式。本项可行性报告得出结论，尽管存在潜在的困难，多边协议仍然是一个快速执行与协定相关的反BEPS措施的有效途径。
substantive recommendations for change in a number of treaty-based areas. A multilateral instrument might also facilitate coordination across a wider range of BEPS-related issues. For example, the implementation of work on country-by-country reporting may be facilitated by the use of a multilateral instrument which also includes rules regarding the confidentiality of the information obtained by tax administrations. Similarly, problems of both double taxation and double-non-taxation associated with expense allocation are particularly noteworthy in the context of interest expense. A multilateral interest expense allocation agreement could be implemented through the multilateral instrument. It also may be possible to develop new dispute resolution mechanisms that could further ensure that double taxation does not result from unilateral and uncoordinated responses to BEPS.

A multilateral instrument to implement BEPS outputs is an effective and innovative solution. This feasibility study concludes that despite potential challenges, a multilateral instrument is a promising way to quickly implement treaty-related BEPS measures. The G20 asked for this feasibility study to be prepared in parallel to the development of the actual measures to counter BEPS-related issues so as to most efficiently lay the groundwork for implementation. Continuing that process would require convening an International Conference to implement treaty-related BEPS measures. The mandate of the Conference should be limited in time and in scope (implementing the BEPS Action Plan).

A multilateral instrument should be conceived in a dynamic way. Many countries recognise the need to update their international tax rules to reflect changed circumstances of international business, and tax treaties are an important part of that process. Recognising that the initial work is focused on BEPS-related treaty measures, it is sensible to also reflect on possible further steps to continue to streamline the implementation of changes to the international tax treaty architecture using the same mechanism. For example, further updates to the model tax conventions might be implemented multilaterally. On the other hand, any decision to address a broader range of international tax issues multilaterally would represent a more significant step towards multilateralism in tax matters than the current work to use a multilateral instrument to address BEPS-related tax treaty issues. For the moment, it is important to keep the multilateral instrument narrowly targeted, and at the same time start a reflection on what further incremental opportunities may be available.

3. NEXT STEPS: SCOPE THE INTERNATIONAL CONFERENCE

The treaty-based BEPS actions must be completed before the substantive components of the multilateral instrument can be finalised. The development of a multilateral instrument requires framework provisions related to its entry into force, language, etc. and more importantly agreement on the substance of the tax treaty measures required to respond to BEPS. The OECD/G20 BEPS Project is making steady progress towards the development of those measures. Some of the treaty-based BEPS outputs will be delivered by September 2014, while a number of others will be delivered in 2015. Plans for an International Conference to negotiate a multilateral instrument that implements agreed treaty-based measures to tackle BEPS must take this timetable into account.

This report recommends convening an International Conference to develop the multilateral instrument in 2015. In accordance with standard treaty-making practice, an
要求在制定反 BEPS 的切实措施的同时，着手准备本项可行性研究，以便最有效地为实施奠定基础。随后需召开国际会议来执行协定相关 BEPS 措施。应该该国际会议在时间范围（执行 BEPS 行动计划）上作出限定。

多边协议应基于动态的假设。许多国家已经意识到更新他们的国际税法来反映国际商业环境变化的必要性。且税收协定是这个过程中重要的一环。各方在认可最初的工作仅集中在 BEPS 相关的协定措施的同时，理应思考如何用同样的机制来继续进一步简化国际税收协定修订的实施过程。比如，各方可以实施对税收协定框架的进一步更新。另外，任何对更大范围内国际税收问题进行多边解决的决定，相比于目前通过多边协议解决 BEPS 相关的税收协定问题，都显示出在全球解决税务问题方面的重大进步。目前要保持多边协议较窄的针对性，这点至关重要，但同时也要开始思考未来逐步可行的机会。

3. 下一步：设定国际会议的范围

基于税收协定的 BEPS 行动需要在多边协议的主体部分定稿前完成。多边协议的制定要求制定框架条款包含生效条款，语种等相关规定。更重要的是要包含应对 BEPS 的主要税收协定措施。OECD ／ G20 的 BEPS 计划朝着这些措施的制定持续且稳定的进展。一些基于协定的 BEPS 行动报告将在 2014 年 9 月推出，而其他一些于 2015 年才能出台。用于实施反 BEPS 措施的多边协议将在国际会议中进行商讨，而该会议的召开计划必须将其纳入考虑。

本报告提议于 2015 年召开一次国际会议来发展多边协议。按照标准的协定制定实践，应召开一次国际会议来对多边协议进行制定。
International Conference should be convened to develop the multilateral instrument. The International Conference should be open to all interested countries, under the aegis of the OECD and the G20. To maintain momentum, the work on the framework provisions of the multilateral instrument should begin in 2015. Once the recommendations for BEPS-related treaty measures are finalised in the context of the BEPS Project, they can then be considered by the International Conference and included in the multilateral instrument. In addition to incorporating the BEPS-related treaty measures, the International Conference should reflect on whether further protocols or similar multilateral instruments could be used in the future to foster a more effective international tax environment.

On that basis it is recommended that, if the present proposal is endorsed, a mandate be quickly developed so that the International Conference be gathered in early 2015 to start its work.
该国际会议应在 OECD 和 G20 的支持下，对所有相关国家开放。为维持其进程，关于多边协议的框架条款工作应于 2015 年开始进行。一旦关于 BEPS 的协定措施在 BEPS 大背景下完成，此国际会议就可以对其进行审议，并将其引入多边协议中。除了纳入 BEPS 相关的税收协定措施外，此国际会议也应考虑在未来是否能够进一步使用议定书或相似的多边协议，来促成更有效的国际税收环境。

基于上述了解，若目前的提议通过，建议将其迅速授权，从而促使国际会议能在 2015 年早些时候召集，并启动相关工作。
ANNEX A

A TOOLBOX FOR A MULTILATERAL INSTRUMENT
FOR THE SWIFT IMPLEMENTATION OF BEPS MEASURES

Executive summary

This annex offers a toolbox of theoretical options which could be used, as appropriate, in the
development of a multilateral instrument for the swift implementation of base erosion and profit
shifting (BEPS) measures. The options presented are based on an analysis of doctrine and
precedents in public international law. It draws on the work of the informal group of experts on
the multilateral instrument, a group comprised of both experts in public international law and
experts in international taxation set up by the Committee on Fiscal Affairs (CFA) to advise on
the feasibility of a multilateral instrument. The annex is structured around three key
conclusions: a multilateral instrument can (1) implement BEPS measures and modify the
existing network of bilateral tax treaties; (2) provide appropriate flexibility in their level of
commitment; and (3) ensure transparency and clarity for all stakeholders.

(1) The objective of the multilateral instrument would be the implementation of measures to
address BEPS and its consequence would be the modification of certain provisions of the
existing network of bilateral tax treaties. The bilateral tax treaties would remain in force for all
non-BEPS related issues. It would be preferable, for reasons of efficiency and transparency, to
define this relationship through the inclusion of compatibility clauses in the multilateral
instrument. There are several options in order to ensure consistency in the interpretation and
implementation of the multilateral instrument. Solutions also exist with regard to the dates of
entry into force of different provisions and logistical issues including differences in the authentic
languages of the multilateral instrument and bilateral tax treaties.

(2) As appropriate, the multilateral instrument can offer parties flexibility in their level of
commitment within certain defined boundaries in order to move towards a level playing field.
Defined flexibility as to the level of commitment of the parties vis-a-vis all or certain parties can
be achieved through the use of opt-out mechanisms allowing parties to opt-out or modify
the legal effects of certain provisions; a choice between alternative – and clearly delineated –
provisions; and opt-in mechanisms offering parties the possibility to take on additional
commitments. The level of commitment of parties can also be modulated through the language
used in the multilateral instrument (strong or soft wording) and types of obligations (of results
and/or means).

(3) Considering the complexity of the network of bilateral tax treaties and the number of
interested stakeholders (tax administrations, tax payers, third parties), it is vital that the
multilateral instrument ensures the transparency and clarity of the commitments undertaken by
the parties. Mechanisms are available to ensure clear and publicly accessible information as
regards, on the one hand, the interaction between the multilateral instrument and bilateral tax
treaties and, on the other hand, the use of the mechanisms for flexibility set up by the
multilateral instrument.

The annex concludes that a multilateral instrument to implement the measures developed in
the course of the work on BEPS is feasible and would be the most efficient way to modify the
existing network of bilateral tax treaties. A multilateral instrument offers an expansive and
adaptable toolkit: once the substantive measures have been agreed, all the necessary
附录 A

用于反税基侵蚀和利润转移措施迅速实施的多边协议参考工具箱

摘要

本附录提供理论上可行的各类工具选项，可适时用作发展为迅速实施反税基侵蚀和利润转移措施而使用的多边协议。这些所列工具的选项基于对国际公法信条及先例的分析。它吸收了多边协议非正式专家小组的成果工作，该小组由政府事务委员会牵头成立，由国际公法专家和国内法专家共同组成，并致力于探讨多边协议的可行性。本附录围绕三项主要论述构成，即多边协议可以：

(1) 实施反税基侵蚀和利润转移措施并修订现有双边税收协定网络 (2) 提供承诺水平的适当灵活性，且 (3) 确保面向各利益相关者的透明度和清晰度。

(1) 多边协议的设立目的在于实施用于解决税基侵蚀和利润转移问题的一系列措施，而它的结果则是对双边税收协定现有网络下某些条款进行修订。对于所有非税基侵蚀和利润转移的问题，双边税收协定将继续生效。基于提高效率和透明度的目的，可优先考虑在多边协议中加入兼容性条款来定义此种关系。为确保多边协议解读和执行的一致性，本附录提供了若干选项。解决方案也包括不同条款的适应范围以及一些后勤类问题，包括多边协议和双边税收协定真实语言的差异。

(2) 多边协议可适时提供缔约方于限定范围内的弹姓承诺水平，以促成公平竞争环境。针对所有缔约方或某些缔约方的弹姓承诺水平可通过一定机制达成，即通过选择退出机制，允许当事人排除或修改某些条款的法律效力；替代条款和明确界定条款之间的选择。某些缔约方的承诺水平也可通过多边协议中所使用的语言（强硬或软化的选择）以及义务类型（结果和/或手段）进行调节。

(3) 考虑到双边税收协定网络的复杂性以及各利益相关者（税管当局、纳税人、第三方）数量众多，多边协议确保各方承诺的透明度和清晰度是非常关键的。此机制确保一定信息的清晰和公开性，一方面多边协议与双边税收协定之间的互动信息，另一方面该机制的使用可保证多边协议所确立的灵活性。

本附录的结论为：将多边协议用于实施税基侵蚀和利润转移工作过程中形成的各项措施是可行的，且是修订现有双边税收协定网络的最有效率的方法。多边协议将提供一个广泛且适应性强的工具包，即一旦通过实践性措施，所有必要机制将使其成为多边承诺。新工具的发展也伴随着技术问题的产生，但它们可以通过基于协定法规和实践的，且经过测试的方案来寻求解决。随着该项目的推进，国际税务专家和国际公法专家需要继续通力合作，携手并进。
mechanisms exist to reflect them as multilateral undertakings. As with the development of any new instrument, there are technical issues but they can be solved through well-tested solutions drawing on treaty law and practice. International tax experts and public international law experts will need to continue working hand in hand as this project moves forward.

Introduction

Action 15 of the BEPS Action Plan mandates the analysis of tax and public international law issues related to the development of a multilateral instrument to enable interested parties to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. Action 15 refers to a “multilateral instrument” i.e. a treaty concluded between more than two parties. According to the Vienna Convention on the Law of Treaties (VCLT), a treaty can be defined as:

"... an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

The annex to the report on Action 15 draws on the work of the informal group of experts on the multilateral instrument set up by the CFA to advise on the feasibility of a multilateral instrument to implement BEPS measures. The group was comprised of thirteen experts in public international law or international taxation from both civil and common law countries.

It is important to underline that the annex has been prepared in parallel to the discussions on the substance of the possible BEPS measures and that the experts have not participated in those intergovernmental discussions.

Accordingly, this annex offers a toolbox of theoretical options which could be used, as appropriate, in the development of a multilateral instrument. The options presented are based solely on an analysis of doctrine and precedents in public international law and should not be seen in any way as concrete proposals for the future multilateral instrument on BEPS.

The examples set out in the annex deliberately offer a vast array of options so that the drafters of a future multilateral instrument can pick and choose the solutions which are most appropriate for their purposes. As with any toolbox, it is not possible to use all of the tools at the same time. Moreover, the examples necessarily come from a wide range of subject areas and may have to be adapted to the specificities of the area of taxation.

The present annex is structured around three key issues that work on the multilateral instrument will need to address: (1) how to modify the network of bilateral tax treaties; (2) possibilities for providing the appropriate flexibility in States’ level of commitment in order to enable effective coordination to tackle BEPS while preserving State sovereignty in tax matters; and (3) how to ensure transparency and clarity for all stakeholders. As set out below, there are various options for the multilateral instrument to fulfil each of these objectives, based on the law of treaties as well as existing precedents in various fields of international law.

A.1. A Multilateral instrument can modify the network of bilateral tax treaties

The primary objective of the multilateral instrument would be to implement the measures agreed in order to address BEPS, thereby modifying the existing network of bilateral tax treaties. At the outset, it is important to note that public international law allows various options for the modification of treaties as long as the principle of sovereignty and State consent is respected. Accordingly, if the parties agree, a treaty can be modified in a number of different ways, including through the adoption of a subsequent multilateral agreement, as envisaged here.
引言

第15项行动计划要求进行对有关多边协议发展的税法及国际公法问题的分析，使有关各方利益主体得以实施税基侵蚀和利润转移工作中形成的各项措施，并且对双边税收协定进行修改。第15项行动计划系指“多边协议”，即两个以上缔约方之间签订的协定。根据维也纳条约法公约（以下简称“VCLT”），协定可定义为：

“…各国间可以书面形式缔结的、受国际法律的国际条约，无论其体现为单个或两个以上相关工具，或者其使用的特定名称”。

第15项行动计划附录吸收了多边协议非正式专家小组的工作成果，该小组由财政事务委员会牵头成立，并致力于探讨为迅速实施反税基侵蚀和利润转移措施而使用的多边协议的可行性。

需要强调的是，本附录的撰写与反税基侵蚀和利润转移措施的实质内容讨论同时进行，且专家们皆未参加过政府间的讨论。

据此，本附录提供理论上可行的各类工具选项，可适时用于多边协议的发展。所列示的选项完全基于对国际公法惯例及先例的分析，不应在任何情况下视为未来税基侵蚀和利润转移项目中多边协议的具体提案。

附录中的示例部分提供了大量的选项，使未来多边协议起草者能够根据各自的目标选择最适合的解决方案。与其他工具箱一样，同时使用所有的工具是不可能的。此外，这些示例来自不同主题领域，需依税务领域的情况进行调整。

本附录围绕三项多边协议重要议题，并参考反映：（1）如何修订双边税收协定网络（2）提供国家级承诺水平的适当弹性的可能性，以便通过有效合作来应对税基侵蚀和利润转移税务问题，且同时保留国家在税务问题上的主权；（3）如何确保国家利益相关的透明度和清晰度。如下所述，存在多个基于协定法和及国际法各个领域中先例的多边协议选项，以满足上述列举的目标。

A.1 多边协议可修订双边税收协定网络

多边协议的首要目标是通过修订双边税收协定现有网络，以实施各方同意的，为解决税基侵蚀和利润转移问题的各项措施。首先需注意的是，在不违反主权原则和国家同意的前提下，国际公法允许各种修改协定的选项，相应的，在各方同意的前提下，协定可以通多方式修订，包括此处所设想的采用后续多边协议的方式。
A.1.1. Terminology: "Modification" is more appropriate than "amendment"

The underlying goal of the BEPS Project is to develop and implement new common rules to tackle BEPS among all interested parties. The multilateral instrument need not and would not terminate the pre-existing network of bilateral treaties in order to achieve this goal. Instead it would aim to achieve a concurrent and integrated application of the provisions of the multilateral instrument and the bilateral treaties as they relate to BEPS. The bilateral treaties will not only remain in force but they will continue to play a major role in defining the specific relations of each pair of parties with regard to co-operation in tax matters.

Under international law, the basic principle is that a subsequent treaty prevails over a previously concluded treaty on the same subject matter. Accordingly, without formally amending each and every bilateral treaty, a new multilateral instrument would operate to modify the overlapping provisions in all bilateral treaties. Indeed, there have been a number of situations in which States have adopted multilateral conventions in order to introduce common international rules and standards and thereby harmonise a network of bilateral treaties, for example, in the area of extradition.

Accordingly, the term "modification" is better adapted to this project than the term "amendment". There is no need for a formal "amendment" of each one of the existing bilateral tax treaties. Rather, these treaties will be "modified" automatically by the multilateral instrument.

A.1.2 Relationship between the multilateral instrument and bilateral tax treaties

In the present case, it is foreseen that only certain provisions of the bilateral tax treaties will be modified and superseded by the multilateral instrument. Therefore the substantive rules contained in the bilateral tax treaties will remain in force in areas not covered by the multilateral instrument.

A.1.2.1 Bilateral tax treaties concluded prior to the entry into force of the multilateral instrument

There are two ways to address the question of the relationship between a multilateral instrument and the bilateral treaties modified by it: (1) to explicitly define this relationship in the multilateral instrument or (2) to let this relationship be defined by the general rules of international law.

In the silence of the multilateral treaty, the applicable customary rule, codified in Article 30(3) of the VCLT, is that when two rules apply to the same matter, the later in time prevails (lex posterior derogat legi priori). Accordingly, earlier (i.e. previously concluded) bilateral treaties would continue to apply only to the extent that their provisions are compatible with those of the later multilateral treaty.

However, in order to preserve clarity and transparency, it would be important to explicitly define the relationship between the multilateral instrument and the existing network of bilateral treaties. This can be done through the inclusion of compatibility clauses in the multilateral instrument.

i. The rationale for compatibility clauses

When treaties are negotiated in areas where other treaties already exist, it is common practice to include a compatibility clause (or "conflict clause") to explicitly address the relationship between the treaties. This has been done in several other cases in which the
A.1.1 术语—“修订”比“修改”更恰当

税基侵蚀和利润转移方案的最终目标是发展和实施新法律原理原则以在各利益主体间应对税基侵蚀和利润转移行为。为实现此目标，多边协议不需也不会终止原先存在的双边税收协定网络。相反地，它将致力于达成税基侵蚀和利润转移相关的多边协议条款和双边协定同时及整合的应用。双边协议不只会在继续生效，也将继续在确定缔约双方税务合作事宜的具体关系上扮演重要角色。

国际法的基本原则是，后缔结的多边协定在同一体系上优先于之前缔结的多边协定。据此，无需正式修改任一或全部双边协定，新的多边协议可修订与其重叠的所有双边协定中的内容。事实上，已存在一些国家为援引国际通行准则进而协调整个双边协定网络，而采用多边协定的情形，例如，在引渡方面。

据此，术语“修订”比“修改”更适用于本案。无需逐一对现存双边税收协定进行正式“修改”，相反，这些协定将被多边协议自动“修订”。

A.1.2 《多边协议和双边税收协定之间的关系

在当前的情形下，可预见的，将只有部分双边税收协定条款将被多边协议修订和取代。因此双边税收协定中的实质性规则，将在多边协议所未涵盖的领域继续生效。

A.1.2.1 多边协议生效后所缔结的双边税收协定

有两种方法可以解决多边协议与被其修订的双边协定之间的关系问题：（1）明确在多边协议中定义该关系或（2）借由国际法一般原则界定该关系。

如多边协定中未提及，则适用 VCLT 第 30（3）条规定的习惯规则，即两项规定涉及同一事项时，时间在后者优先适用（后法优于前法）。据此，之前（即先缔结）的双边协定规定仅在与后缔结的多边协定可兼容范围内继续适用。

然而，为保留透明度和清晰度，明确界定多边协议和现有双边协定网络是十分重要的。此举可经由在多边协议中纳入兼容性条款完成。

i. 兼容性条款的原理

当协定范围所涉及领域被其他现有协定所涵盖，实践中常见的做法是纳入兼容性条款（或“冲突条款”），以明确规定协定之间的关系。
provisions of a multilateral instrument have superseded the provisions of an existing network of bilateral treaties, particularly when the subject matter is complex (see below).

In the present case, given the number of bilateral treaties concerned and the technical nature of their content, it would be preferable to have an express provision in the multilateral instrument to define its relationship with existing bilateral treaties. If the parties agree, a mechanism could also be set up to resolve issues related to the implementation of the compatibility clause.

This would ensure clarity and transparency for all stakeholders (national administrations, tax services, domestic judges, taxpayers, civil society, etc.) on the fact that, in principle, the provisions of the multilateral instrument are to be applied in case of conflict with pre-existing rules of the bilateral treaties.

\[\text{ii. Types of compatibility clause}\]

The practice is diverse and there is no standard compatibility clause. In the precedents described below, multilateral instruments have “abrogated”, “replaced”, “superseded” and/or “modified” the provisions of pre-existing bilateral treaties. In one example, the provisions of the multilateral instrument have been “included” in the bilateral treaties. The level of precision and the extent of changes made to the bilateral treaties vary.

In the following examples, it is important to note that the bilateral treaty survives, either in areas not addressed by the provisions of the multilateral instrument or as between a party to the multilateral instrument and a third party both of whom are parties to a previously concluded treaty (see section A.1.3 below).

The multilateral instrument supersedes the provisions of bilateral treaties which cover the same specific subject matter as the multilateral instrument.

\[\text{European Convention on Extradition (1957)}\]

Article 28(1) – Relations between this Convention and bilateral Agreements: “This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.”

\[\text{European Convention on the Repatriation of Minors (1970)}\]

Article 27(1): “Subject to the provisions of paragraphs 3 and 4 of this article, this Convention shall, in respect of the territories to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements between Contracting States governing the repatriation of minors for the reasons specified in Article 2, to the extent that the Contracting States may always avail themselves of the facilities for repatriation provided for in this Convention.”
此做法已用于其他许多案中，即多边协议条款取代现有双边协定网络，特别是当所涉及事项较复杂时（见下文）。

在当前的情形下，考虑到所涉及双边协定的数量及其内容的特性，最好在多边协议条款中明确规定其与现有双边协定的关系。如各方同意，亦可设置相关机制以解决关于如何实施兼容性条款的问题。

当与现有双边协定冲突时，原则上可采用多边协议条款，基于这一事实，上述做法将确保面向各利益相关者（国家管理、税收服务方、国内法令、纳税人，公民社会等）的透明度和清晰度。

ii 兼容性条款的类型

实践中的兼容性条款多样化且无范式条款。在上述先例中，多边协议“废除”，“替换”，“取代”以及/或“修订”了现有双边协定条款。在其中一个案例中，多边协议条款被“纳入”到了双边协定中。标准水平和对双边协定的改动程度均可变化。

在上述案例中，应注意，无论是多边协议条款未规定的领域，或在协议缔约方和第三方皆为

多边协议取代与其涵盖相同具体事项的双边协定条款；

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欧洲引渡公约（1957年）

第28条第1款——本公约和双边协定之间的关系：“本公约，对于各缔约国，可取代任意同缔约国之间的管理引渡的双边协定，公约或者协议条款。”

欧洲遗嘱未成年人公约（1970年）

第27条第1款：“除适用于本条第1款和第4款的规定外，根据第2条所阐明的原因，本公约对于各缔约国，其缔约国能够使用公约中关于引渡的方法的前提下，可取代任何缔约国之间的管理遗嘱未成年人的协定，公约或双边协议条款。”

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The multilateral instrument modifies the provisions of pre-existing (bilateral or other) treaties only in so far as they differ from or are incompatible with the provisions of the multilateral instrument. There are various thresholds for the invocation of these compatibility clauses: in some cases, any difference will suffice ("at variance"), while others require inconsistency or incompatibility between the provisions.
多边协议仅在与其条款内容不同或不兼容情形下修订现有（双边或其他）协定。这些兼容性条款的实施存在着不同的临界点：在一些案例中，只要条款间存在任何区别（“存有差异”）即适用，其他案例则要求条款存在不一致性或不兼容情形。
European Convention on the Suppression of Terrorism (1977)

Article 8(3): “The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.”


Article 103 – Relation to Other Agreements: “1. The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party. 2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.”


Article 11(5): “The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in this article shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.”

There are also cases in which the compatibility clause, while providing for the primacy of the multilateral instrument over pre-existing (bilateral or other) treaties, explains that the rights and obligations arising from these other treaties are not affected by the multilateral instrument to the extent that they are compatible with the multilateral instrument. The first example is noteworthy: the multilateral instrument stipulates that its provisions supersede those of pre-existing treaties but explicitly provides that obligations in pre-existing treaties on issues not addressed by the multilateral instrument continue to apply.

European Convention on Mutual Assistance in Criminal Matters (1959)

Article 26: “1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties. 2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.”


Article 311(2) – Relation to other conventions and international agreements: “This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention [...]”

A variant is the case when the multilateral instrument creates an exception to a general principle that the provisions of the multilateral instrument supersede those of prior agreements, by providing that “more favourable” provisions of a bilateral or multilateral treaty existing at the time of the conclusion of the multilateral instrument shall not be affected.
欧洲防制恐怖主义公约（1977年）

第8条第3款：“在缔约国之间签订的关于双边刑事事项和事务的合作和安排的所有条件，包括欧洲刑事事项互助公约，在与本公约内容不兼容的地方应当进行修改。”

北美自由贸易协定（1994年）

第103条——与其他协议的关系：“1.缔约方应确认并发展为贸易协定或者与它已参与缔结的协议下的，针对对方的已有权利和义务。2.若本协议与其他上述协议存在不一致，除非协议另有规定外，在规定不一致的方面由本协议为准。”

禁止向恐怖主义提供资助的国际公约（1999年）

第11条第5款：“缔约国之间所有引渡条约中与第2条所述禁止有关的规定，与本公约不符的，应视为缔约国之间已参照本公约进行了相应修改。”

另有一部分案例的兼容性条款，尽管指明多边协议优先于现存（双边或其他）协定的首要原则，但同时阐述了其他协定下的权利和义务，在与多边协议兼容的情况下，将不受多边协议的影响。一个例子值得注意：该多边协议规定其条款取代现存协定，但同时明确指出现存协定中未被多边协议解决问题的相应义务将继续适用。

欧洲刑事事项互助公约（1959年）

第26条：“1.除适用第15条第7款以及第16条第3款的规定外，本公约，针对各缔约国，可取代任何现有缔约国之间的关于刑事互助条款规定的义务。2.本公约不影响特定领域的双边或者多边国际公约下关于具体互助条款规定的义务。

联合国海洋法公约（1982年）

第311条第2款——与其他公约及国际协议的关系：“本公约不改变各缔约国在与本公约相符合的其他协议下产生的权利和义务，并以不影响其他缔约国根据本公约享有其权利和履行其义务为限。”

在另外的一些情形下，多边协议可能创建新的义务优先于先前的义务关系——就原则的例外规定，即规定当“更有利的”双边或多边协定条款于多边协议缔结时已存在，则其效力不受影响。

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Convention for the Elimination of All Forms of Discrimination Against Women (1979)

Article 23: “Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: [...] (b) in any other international convention, treaty or agreement in force for that State.”

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

Article 81(1): “Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of: [...] (b) any bilateral or multilateral treaty in force for the State Party concerned.”

Finally, in some cases, the multilateral treaty goes further and clearly indicates which of its provisions are added to the bilateral instruments or which provisions of the bilateral treaties are modified and how. The following example concerns the addition by a multilateral treaty to a list of offences defined as extraditable in bilateral treaties.


Article 11(1): “[t]he offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties.”

iii. Compatibility clauses can address complex situations

A compatibility clause can take into account variations of scope, wording and paragraph numbering between bilateral treaties modified by the multilateral instrument. Careful drafting of the clause can circumvent the potential issues that could arise from those variations.

There are useful precedents in which the compatibility clause in the multilateral instrument describes:

The provisions to be modified by using a precise description which removes the necessity to refer to a specific provision or paragraph number in the bilateral treaties.

The exact effect of its provisions on those of bilateral treaties, through the inclusion of connecting terms such as “in place of”, “in addition to”, “in the absence of”.
消除一切形式歧视妇女行为公约（1979年）

第23条： “如…[有关法令]在具体可适用性和范围内未包括任何条款，致使该公约对有关法令未包括的任何其他国际公约，协定或协议下，[有关法令]所规定的权利或义务不具有同等效力。’”

保护所有移民劳工及其家庭成员权利国际公约（1990年）

第81条第1款： “如[有关法令]在具体可适用性和范围未包括任何条款，致使该公约对有关法令未包括的任何其他国际公约，协定或协议下，[有关法令]所规定的权利或义务不具有同等效力。’”

最后，在一些案例中，多边协定进一步明确，清楚的说明了双边工具中将添加哪些多边协定的条款，或哪些双边协定将被修订且如何进行。下述例子是关于多边协定对在双边协定中定义为可引用的违规列表的添加；

制止危及海上航行安全非法行为公约（1988年）

第11条第1款： “第3条所列罪行应被视为包括在任何缔约国之间任何现有引渡条约中的可引渡的罪行。”

 iii. 兼容性条款可应对复杂情形

兼容性条款可考虑被多边协议所修订的双边协定之间的变化，包括范围、措辞和段落编号。
仔细观察相关条文可规避因这些变化而可能产生的潜在问题。

有一些有用的先例，其相关多边协议中的兼容性条款如此描述：

通过使用一个精确描述来修订条款，以消除需要参看双边协定中单一特定条款和段落编号的必要性；

通过纳入衔接用语，例如“取替”，“除此之外”，“在没有…情况下”，其条款对这些双边协定的确切影响效力。
Agreement on extradition between the European Union and the United States of America (2003)^2

Article 3(1) – Scope of application of this Agreement in relation to bilateral extradition treaties with Member States: "The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral extradition treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

(a) Article 4 shall be applied in place of bilateral treaty provisions that authorise extradition exclusively with respect to a list of specified criminal offences;

(b) Article 5 shall be applied in place of bilateral treaty provisions governing transmission, certification, authentication or legalization of an extradition request and supporting documents transmitted by the requesting State;

(c) Article 6 shall be applied in the absence of bilateral treaty provisions authorising direct transmission of provisional arrest requests between the United States Department of Justice and the Ministry of Justice of the Member State concerned;

(d) Article 7 shall be applied in addition to bilateral treaty provisions governing transmission of extradition requests;

(e) Article 8 shall be applied in the absence of bilateral treaty provisions governing the submission of supplementary information: where bilateral treaty provisions do not specify the channel to be used, paragraph 2 of that Article shall also be applied;

(f) Article 9 shall be applied in the absence of bilateral treaty provisions authorising temporary surrender of persons being proceeded against or serving a sentence in the requested State;

(g) Article 10 shall be applied, except as otherwise specified therein, in place of, or in the absence of, bilateral treaty provisions pertaining to decision on several requests for extradition of the same person;

(h) Article 11 shall be applied in the absence of bilateral treaty provisions authorising waiver of extradition or simplified extradition procedures;

(i) Article 12 shall be applied in the absence of bilateral treaty provisions governing transit, where bilateral treaty provisions do not specify the procedure governing unscheduled landing of aircraft; paragraph 3 of that Article shall also be applied;

(j) Article 13 may be applied by the requested State in place of, or in the absence of, bilateral treaty provisions governing capital punishment;

(k) Article 14 shall be applied in the absence of bilateral treaty provisions governing treatment of sensitive information in a request."

A.1.2.2. Bilateral tax treaties concluded after the entry into force of the multilateral instrument

In order to ensure consistency with the legal regime established by the multilateral instrument, the parties might deem it necessary to define certain parameters for their future treaty-making activities through a forward looking compatibility or "obedience" clause.

Compatibility or obedience clauses, which are included in a number of existing multilateral treaties, stipulate that parties shall not conclude subsequent agreements which are in contradiction with the treaty.

In some cases, the objective of subsequent agreements by two or more parties to a
欧盟与美国引渡协议（2003年）

第3条第1款—本协议关于成员国之间双边引渡条约的适用范围：
欧盟，根据欧盟规定，和美国，应当确认本协议关于欧盟成员国与美国之间签订的，在本协议生效之日时有效的双边引渡条约的内容，在下列条件下适用：
(a) 第4条应当取代双边协定中对特定刑事罪行进行引渡的授权的条款；
(b) 第5条应当取代双边协定中处理引渡的请求，认证，验证或者合法化，以及请求国转移的支持性文件的条款；
(c) 在缺乏双边协定对美国司法部和欧盟成员国司法部之间临时逮捕要求的直接送达授权条款时，应当适用第6条；
(d) 第7条应补充适用于双边协定中有关引渡请求传达的条款；
(e) 在缺乏双边协定对补充资料提交要求的条款时，应当适用第8条，当双边条约规定未作出提交途径的具体规定时，也可适用第8条第2款；
(f) 在缺乏授权临时交出正在被被请求国起诉或者该国服刑人员的双边协定条款时，应当适用第9条；
(g) 除非有明确的例外规定，否则在没有关于多国请求引渡同一个人时如何决定的双边协定条款时，应当适用第10条，或者如果在该条款，第10条应取代该条款；
(h) 当缺乏关于引渡引渡或者简易引渡的双边协定条款的时候，应当适用第11条；
(i) 如果缺乏关于返还管理的双边协定条款时，应当适用第12条，当双边协定条款中未明确排除在飞机着陆的程序时，则应当适用该条第3款；
(j) 当缺乏关于执行死刑程序的双边协定条款时，被请求国可适用第13条，或者如果存在该条款，则第13条应取代该条款；
(k) 当缺乏处理拒绝中的敏感信息的双边协定条款时，应适用第14条。”

A.1.2.2 多边协议生效后所缔结的双边税收协定

为确保与多边协议所确立法律体制的一致性，各方可能认为有必要通过前瞻性的兼容性条款或“服从”条款，来定义各方未来协定修订活动中的某些参数。

现有许多协议中纳入的兼容性或服从条款，规定各方不再订立与其矛盾的后续协议。

在一些案例中，由多边协议各方或更多缔约方共同修订后续协定，其目标可能是通过建立一套
multilateral instrument may be to go further than the content of the main agreement by establishing a "special regime" between themselves. This is the scenario addressed and codified by article 41 of the VCLT." According to this article, subsequent agreements must not be prohibited by the main agreement and must not affect the rights and obligations of other parties to the treaty.

Multilateral instruments may include clauses which allow parties to take on more far reaching commitments with other parties on the condition that the subsequent agreements can only confirm, supplement, extend or amplify the provisions of the main multilateral treaty.

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European Convention on Extradition (1957)

Article 28(2) – Relations between this Convention and bilateral Agreements: "The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein."

Vienna Convention on Consular Relations (1963)

Article 73(2) – Relationship between the present Convention and other international agreements: “Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof."

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Multilateral instruments can also take the opposite approach providing that any subsequent agreements must not run contrary to the object and purpose of the main treaty or be inconsistent with its provisions.

Finally, in some cases the multilateral treaty may even invite parties to adopt subsequent agreements in order to go further than the main treaty or facilitate its effective application.

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Article 19 – Joint investigations: “State Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. [...]”

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A.1.3 Relationship between parties to the multilateral instrument and third parties

A corollary of the principle of State sovereignty is that treaties are only binding on the parties.'

"A treaty does not create either obligations or rights for a third State without its consent" and "[a]n obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing." (emphasis added)

Accordingly, in the present case, the content of the multilateral instrument would not be
他们之间的“特殊体制”，从而在主要协议内容上更进一步。VCLT 第 41 条阐释了该情形。根据该条文，随后的协议可能在不违反任何条约的禁止范围，且只保证协定其他缔约方权利义务不受影响。

多边协议可能允许缔约方与他方作出更深远承诺的条款，前提是随后的协定仅能确定，补充、延长或扩大主要多边协定的条款。

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欧洲引渡公约（1957 年）

第 28 条第 2 款——本公约与双边协定之关系：“本公约缔约各方可以仅为了补充本公约的规定或便于适用包含在其中的原则，而在他们之间签订双边或多边协定。”

维也纳领事关系公约（1963 年）

73 条第 2 款——本公约与其他国际协定之关系 Article 73（2）——“本公约并不禁止缔约国在签订国际协议时确认、补充、延长、扩大现有公约的各项规定。”

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多边协议也可采取相反的方法，只要随后的协议不违背主要协定的目标及宗旨，或与其条款不一致。

最后，在某些情况下，多边协定甚至可以提议缔约方采用后续协议，以在主要协议基础上更进一步或者帮助其有效实施。

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联合国打击跨国有组织犯罪公约及议定书（2000 年）

第 19 条——联合调查：“缔约国应考虑通过缔结双边或多边协议或安排，以便有关主管当局可就涉及国际刑事法院、起诉或审判程序的事项成立联合调查机制。”

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A.1.3 多边协议缔约方与第三方的关系

国家主权原则得出该协定仅对缔约方产生约束力。

“如未取得同意，协定对第三国产生任何权利或义务”，而“如协定缔约方欲使条款成为义务的条件，且第三国以书面明示接受该项义务，但凡于第三国的该项义务在协定条款下产生。”（加上重点）

相应的，在现有情形下，多边协议的内容不对第三方（即非缔约国）产生约束力。
binding on third parties (i.e. States which are not parties to the instrument). A party to the multilateral instrument and a third party would continue to be bound by the provisions of any bilateral tax treaty concluded between themselves without the modifications set out in the multilateral instrument. It would however be possible to include a variant of the compatibility clause which would request the parties to take into account as far as possible the provisions of the multilateral instrument when negotiating bilateral tax treaties with third parties. The multilateral instrument could also create the possibility for the parties to confer regarding any issues that may be raised by third parties over time.

A.1.4 Timeline for entry into force of the multilateral instrument

A.1.4.1 Entry into force of the instrument and its provisions

1. The date of the “entry into force” of the instrument

The negotiating States can decide at what date and under which conditions the instrument would enter into force, for example, after a certain number of ratifications. The instrument would then be in effect but would only bind those States which have already ratified by that date. Naturally the modalities for the implementation of the multilateral instrument in each State would depend on its constitutional system.


Article 28(2) – Signature and entry into force of the Convention: “This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.”

ii. The “start date” of the different measures provided for in the instrument

Clauses in the multilateral instrument can specify a start date for the various measures foreseen. It is possible to specify different dates for different provisions of the treaty to take effect (e.g. a fixed period after the entry into force of the treaty for withholding taxes and the start of the tax year in each country for other taxes).

The fact that the start of a tax year may be different in each State is not an obstacle. For example, certain measures could take effect at the start of the next tax year in each country following the entry into force of the treaty for that country (or provide for other practical and flexible solutions).


Article 28(6) – Signature and entry into force of the Convention: “The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to
多边协议的缔约方与第三方，继续其双方订立且已被多边协议修订的双边税收协定约束。但它可能纳入一项兼容性条款，用以要求缔约方在与第三方协商双边税收协定时，尽可能考虑多边协议条款的内容。多边协议也可提出，各方商讨第三方未来可能做出的任何问题的可能性。

A.1.4 多边协议生效时点

A.1.4.1 工具生效及其条款

i. 工具“生效”日期

缔约国可决定生效的日期及条件，比如当达到一定数量的批准后，工具将由此生效，但只在生效日已获批准的缔约国产生约束力。每个国家执行多边协议的形式、当然还是取决于其宪法制度。

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税收征管互助公约（1988年）

第28条第2款——公约的签署和生效：“依照本条第一款规定，自五个国家表示同意接受公约的约束之日起，六个月之后的次月的第一天为公约生效日。”

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ii. 工具中不同措施的“开始日期”

多边协议的条款可以为可预见的各种措施指定一个“开始日期”。协定中不同的条款可指定不同的开始生效的日期（比如：协定的预提税在一个固定周期后生效，但其他税种则依各国进入纳税年度起计算）。

事实上，各国纳税年度的开始日可能不同这一状况并不会构成障碍。例如，某些措施可能会在该国协定生效年度次年的纳税年度开始施行（或通过其他适用以及有灵活性的解决方案）。

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税收征管互助公约（1988年）

第28条第6款——公约的签署和生效：“本公约（经2010年议定书修订）对缔约方生效当年后的次年1月1日开始的纳税期限或该日后开始的纳税期限为本公约（经2010年议定书修订）条款规定的征管协助/行政互助适用的纳税期限。如没有纳税期限，征管协助则适用于本公约（经2010年议定书
charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

Agreement among the Governments of the Member States of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits, or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment (1994)

Article 28 – Entry Into Force: “1. This Agreement shall enter into force on the deposit of the second instrument of ratification in accordance with Article 27 and shall thereupon take effect

(a) in respect of taxes withheld at the source, on amounts paid or credited to a person, on the first day of the calendar month next following the month of deposit of the second instrument of ratification;

(b) in respect of other taxes, for taxable years beginning on or after the first day of January next following the deposit of the second instrument of ratification.

2. Where a State ratifies this Agreement after it was entered into force, the Agreement shall take effect in relation to that State

(a) in respect of the taxes mentioned in paragraph 1(a), on the first day of the calendar month next following the deposit of its instrument of ratification;

(b) in respect of other taxes, for the taxable years beginning on or after the first day of January next following the deposit of its instrument of ratification.”

A.1.4.2 Entry into force for a party joining subsequently

The instrument can specify modalities for its entry into force for jurisdictions that become parties after the entry into force of the instrument itself. The default position would be entry into force upon deposit of instrument of ratification/accession but there can be a time lapse, if necessary, in order to deal with potential technical difficulties.


Article 28(5) – Signature and entry into force of the Convention: "[...] In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.”

The provisions on the start date for certain provisions, for example those which would take effect at the start of the next tax year, could also apply to jurisdictions which become parties to the multilateral instrument after its entry into force.
修订）对缔约一方生效当年后的次年 1 月 1 日当日或该日后产生的征税行为征收税款。两个或多个缔
约方可相互协商将本公约（经 2010 年议定书修订）征管协助适用于更早的纳税期间或征管行为/征收
税款。"

加勒比共同体成员国对所得，利息，收益，财产收益避免双重征税和防止逃漏税，并鼓励区域贸易和
投资协定（1994 年）

第 28 条——协议生效： “1. 本协议应当在根据第二十七条签署第二份批准书后即刻生效。
(a) 对于第二份批准书签署后次年 1 月 1 日或以后支付或归于某人的源泉扣缴的税款；
(b) 对于第二份批准书签署后次年的 1 月 1 日或以后开始的纳税年度的其他税收。
2. 当一国在协议生效后才批准该公约，则协议对该国的生效情况如下：
(a) 对于第 1(a) 款中的税种，在其批准批准书的次月的第一天起生效；
(b) 对于其他税种而言，在其批准批准书的次年的 1 月 1 日起或之后开始生效。”

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A.1.4.2 对随后加入方的生效

工具可以制定在工具生效后其他加入国的生效方式。一般默认的生效时点为交存批准书 /
加入书时，但可以允许一定的时滞，以处理潜在的技术困难。

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税收征管互助公约（1988 年）

第 28 条第 5 款——公约签署及生效： "对任何依照本款规定批准本公约（2010 年议定书修订）
的国家，本公约自该批准书之签署日——公约保存人之日后三个月后的次月第一日起生效。"

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规定某些特定条款开始日期的条款也可适用于多边协议生效后加入的国家，例如那些从下一
纳税年度开始生效的条款。

A.1.5 确保多边协议解读和实施的一致性

A.1.5.1 工具可伴随解释性指导

许多协定伴随着经各方同意的注释，提供关于条款含义和实施方式的背景信息和指导。（例如：
A.1.5 Ensuring consistency in the interpretation and implementation of the multilateral instrument

A.1.5.1 The instrument could be accompanied by interpretative guidance

Many treaties are accompanied by commentaries, agreed by all parties, providing background information and guidance as to the meaning of provisions and modalities of implementation (e.g. the Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters,\textsuperscript{10} hereafter "MAC"). The relationship between the treaty and its commentaries could be defined in the provisions of the treaty itself.

A.1.5.2 Discussions between the parties on implementation

If agreed by the parties, a Conference of Parties or a Co-ordinating Body could be given responsibility for discussing questions related to the instrument, or for monitoring its implementation.
对税收征管互助公约的解释性文件（以下简称“MAC”）。协议及其注释的关系可以在协议本身的条款中确立。

A.1.5.2 各方关于实施的讨论

如各方同意，缔约方会议或协调机构可以承担讨论与工具相关问题的责任，或监督其实施。

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Article 11 – Conference of the Parties: “1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention. 2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties. 3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may: (a) make such provision as may be necessary to enable the Secretariat to carry out its duties, and adopt financial provisions; (b) consider and adopt amendments to Appendices I and II in accordance with Article XV; (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III; (d) receive and consider any reports presented by the Secretariat or by any Party; and (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.”


Article 24(3) – Implementation of the Convention: “A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.”

If the parties so wish, more specific questions, such as the implementation of compatibility clauses with respect to pre-existing bilateral treaties, could be addressed by providing in the multilateral instrument for mechanisms such as consultation procedures, which exist in most bilateral tax treaties, to resolve any difficulty.


Article 20 – Special provisions: “2. If difficulties or doubts arise between two or more of the Contracting States regarding the interpretation or application of this Convention, the competent authorities of these States consult together to resolve the issue by special agreement. The outcome of such consultations shall be communicated to the competent authorities of the other Contracting States without delay. 3. If the competent authority of one of the Contracting States is of the opinion that consultations regarding a question referred to in paragraph 2 should take place between the competent authorities of all Contracting States, such consultations shall take place at the request of that State.”

United Nations Framework Convention on Climate Change (1992)

Article 13 – Resolution of questions regarding implementation: “The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.”

South Asian Association for Regional Cooperation (SAARC) Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters (2005)

Article 12 – Implementation: “The Member States shall hold periodic consultations, as appropriate, of Competent Authorities, with a view to facilitating the effective implementation of this Agreement.”
濒危野生动植物种国际贸易公约（1973年）

第11条——缔约方会议：
1. 在本公约生效三年后，秘书处应召集一次缔约方会议。2. 此后，秘书处至少每隔两年召集一次例会。除非大会另有决定，如有三分之二以上的成员国提出书面请求时，秘书处需适时召开特别会议。3. 缔约方在例会或特别会议上，应检查本公约执行情况，并可：（a）作出必要的规定，使秘书处能履行其职责以及采用财务规定；（b）根据第十五条，考虑并通过附件一和附件二的修正案；（c）检查附件一、附件二、附件三所列物种的恢复和保护情况之进展；（d）接收并考虑秘书处、或任何成员国提出之任何报告；且（e）在适当的情况下，提出提高公约效力的建议。

税收征管互助公约（1988年）

第24条第3款：“在OECD的协助下，由缔约各方主管当局组成的协调机构应负责监督本公约的实施和改进。为此目的，该协调机构应提出促进公约基本宗旨得以实施的建议，特别是该协调机构应作为一个论坛，研究增进税收领域国际合作的新方法和新程序。在适当的情况下，还应考虑对公约进行修改或修订，已签署但尚未批准、接受或核准本公约的国家有资格作为观察员出席该协调机构的会议。”

如果双方希望，关于实施有关税制双边协定条款等问题更多具体问题，可以通过多边协议下的机制来讨论解决，例如大多数双边税收协定中都存在的用于解决双重征税问题的协商程序。

北欧多边税收行政互助公约（1989年）

第20条——特别规定：“如果两个缔约国就本公约的解释和适用产生分歧或质疑，双方或多方的主管税务机关应通过协商并以发布特别协议以解决该问题。该协商的结果应立即通知其他缔约方的主管税务机关。3. 如果有关方的主管税务机关认为第20款下的问题应在所有的缔约国之间进行协商，这类协商应在该缔约国的要求下进行。”

关于气候变化的联合国框架协议（1992年）

第13条——解决与实施有关的问题：“缔约方会议应在其第一会议前审议设立一个解决与公约实施有关问题的多边协商程序，供缔约方按此要求时使用。”

南亚区域合作联盟防止双重征税和税收征管互助有限多边协议（2005年）

第12条——实施：“成员国应在适当的时候定期举行主管机关协商，以便有效实施本协议。”
A.1.6 Possibility for expeditious and consensual amendment of the multilateral instrument

The general rule, codified in Article 39 of the VCLT, is that treaties can be amended "by agreement between the parties". It is important to note that "the amending agreement does not bind any State already a Party to the treaty which does not become a Party to the amending agreement".11

Given the nature of this multilateral instrument, it will be particularly important that the mechanism of amendment is efficient but, at the same time, respects sovereign prerogatives and ensures that parties will only be bound by amendments to which they have consented.

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Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)

Article 13(5) – Amendments: "An amendment to this Convention shall enter into force for all States Parties to this Convention, which have accepted it, upon the deposit with the Depository of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance."


Article 39(5) – Amendment: "When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved."

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A.2 A multilateral instrument can provide flexibility in the level of commitment

Given that the objective of the multilateral instrument is to harmonise the approaches to BEPS and create a level playing field, it will be important to ensure that the commitments of the parties are as aligned as possible. However, it is possible for the multilateral instrument to provide flexibility if there are specific cases where certain tax policies that cannot be harmonised amongst all parties to the multilateral instrument and the level of commitment the parties are prepared to undertake depends on the partner jurisdiction.

A.2.1 Two types of flexibility in the level of commitment

A.2.1.1 Level of commitment vis-à-vis all other parties (i.e. on the substance of specific provisions)

There are various ways to ensure flexibility in the substantive commitments made vis-à-vis all parties.

First, it would be possible for parties to exclude the application, in full or in part, of certain provisions.

Second, parties could be given a choice between alternative measures set out in the instrument.

Third, the multilateral instrument could foresee the possibility for parties to take on additional commitments including through an optional protocol to the main treaty, in areas where this would
A.1.6 —一致同意迅速修改多边协议的可能性

VCLT 第 39 条规定的一般原则，即协定可“在协定各方同意”的情况下修改。需要强调的是，三“修改后的新协定不会约束任何未加入新协议的现有协定缔约国”。

鉴于此多边协议的性质，修改机制的有效性是十分重要的，但同时也应尊重主权特权，并确保各方只受他们已经同意的修改内容的约束。

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关于禁止使用、储存、生产和转让杀伤性地雷及销毁此种武器的公约（1997 年）
第 13 条第 5 款——修正：“未受公约的修正应在过半数缔约国同意接受书后，对所有表示接受该项修正的本公约缔约国生效。其后，对于余下的缔约国，修正应从该国接受接受书之日起生效。”

联合国打击跨国有组织犯罪公约（2000 年）
第 39 条第 5 款——修正：“当一项修正生效，它仅对表示同意的缔约国产生约束力。其他缔约国则仍受未修正及他们已批准、接受或核准的任何较早修正的约束。”

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A.2 多边协议可提供承诺水平的弹性

鉴于多边协议的目的在于协调税基侵蚀和利润转移措施，并创建一个公平竞争环境，因此确保缔约各方承诺尽可能一致将是十分重要的。然而，多边协议也可能在特定案例中存在弹性，即当某些税收政策无法与多边协议的所有缔约方协调时，以及各方准备承诺的内容将取决于缔约方的管辖权时。

A.2.1 承诺水平的两种弹性类型

A.2.1.1 针对所有缔约方的承诺水平（即特定条款的实质内容）

有多种确保针对所有缔约方的实质承诺的弹性。
首先，缔约方可能排除全部或部分特定条款的适用。
第二，缔约方可以在工具中国列的替代条款中作出选择。
第三，多边协议可预见缔约方采取额外承诺的可能性，包括通过以协调的方式引入主要协定的可选条款，且该可选条款所涉及领域不会与税基侵蚀和利润转移措施的首要目标相抵触。
这些可能性在下方第 A.2.2 概中有所详述。

A.2.1.2 针对特定缔约方的承诺水平（即根据缔约方的管辖权）
not interfere with the overarching objective of addressing BEPS in a co-ordinated way.

These possibilities are described in more detail in section A.2.2 below.

A.2.1.2 Level of commitment vis-à-vis certain parties (i.e. depending on the partner jurisdiction)

As shown by the variations present in the existing network of bilateral tax treaties, parties may not be ready to accept the same level of commitment vis-à-vis all other parties. It is possible for the instrument to allow parties to modulate their level of commitment depending on the partner jurisdiction in question.

One option would be for certain provisions of the multilateral instrument to explicitly foresee different levels of commitment (alternative provisions – see below section A.2.2.2.) and a system of notifications as to the level of commitment accepted vis-à-vis different parties. A new notification would be necessary each time that another jurisdiction becomes party to the treaty.

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General Agreement on Tariffs and Trade (1947)

Article XXXV – Non-application of the Agreement between Particular Contracting Parties: “1. This Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if: (a) the two contracting parties have not entered into tariff negotiations with each other, and (b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application. 2. The Contracting Parties may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations.”

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A related issue is the situation of parties bound by a regional regime. If appropriate, the multilateral instrument could allow for such parties to apply a specific regime between themselves if certain conditions are met. This can be through the use of a so-called “disconnection clause”, which has been used with regard to the European Union (EU).

A.2.2 Modalities for introducing flexibility in the multilateral instrument

This section develops the modalities for introducing flexibility in the level of substantive commitments, as set out in section A.2.1 above.

Parties could commit to a core set of provisions in the multilateral instrument but could have the possibility to opt-out of certain measures, choose between alternative – clearly delineated – measures and/or opt-in to additional measures. All of these mechanisms could be used as appropriate for different provisions of the multilateral instrument. Finally, flexibility could be introduced through the wording used and the type of obligations contained in the provisions of the multilateral instrument.

Opt-in and opt-out mechanisms are well-known devices to ensure flexibility and are a standard technique used in treaties developed within several international organisations, including the International Labour Organisation (ILO) and International Civil Aviation Organisation (ICAO).12

A.2.2.1 Opt-out mechanisms

Parties are permitted to exclude or modify the legal effect of certain provisions, in whole or
如现存双边协定网络所呈现的差异所示，缔约方可能尚未准备接受针对其他各方均相同的承诺水平。此时工具可能允许缔约方根据缔约双方的管辖区来调节承诺水平。

其中一个选项是，在部分多边协议的条款中明确规定不同程度的承诺水平（备选条款—如后第 A.2.2.2.章）及—或一数不同缔约方已接受承诺水平的通知系统。每当新的协定缔约方加入时，都必须进行新的通知。

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关税及贸易总协定 (1947 年)

第 35 条 —— 特定缔约区之间的协议不适用。‘‘1. 本协议，或者本协议的第二条，将不在任何缔约方与另一缔约方之间适用。如，(a) 两个缔约方没有进行关税谈判，以及 (b) 任—缔约方在另一方成为缔约方时不同意该协议适用。?／经任何缔约方提出请求，缔约方可以检查在特定情况下本条规定的执行情况，并提出适当建议。’’

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一个相关的问题是对缔约方受地区经济体约的情况。如果恰当，多边协议在符合一定条件下，可允许这些缔约方彼此之间采用一个特定的地区体制。上述可通过采用一项被称为 “断开条款” 的条款达成，该条款曾经被欧盟使用。

A.2.2 在多边协议中引入弹性的模式

本章发展了在实质承诺水平中引入弹性的模式，如上方第 A.2.1 章所述。

缔约方可对多边协议的一套核心内容进行承诺，但可拥有退出某些措施的可能性，并在替代措施—明确界定措施，和／或选择加入额外措施中进行选择。所有的这些机制可以适时用于多边协议的不同条款。最后，也可以通过措施的使用和多边协议条款内包含的义务类型来引入弹性。

选择退出和选择加入机制是用以确保弹性的常见工具，也是在一些国际组织形成的协定的标准技术，例如国际劳工组织（ILO）和国际民用航空组织（ICAO）。”

A.2.2.1 选择退出机制

允许缔约方通过利用可预见的明确的选择退出机制，保留意见的形成或其他机制的使用如域损、齐权和限制，全部或部分排除或修订某些条款的法律效力。

“根据协议的定义，排除或选择退出（或退出合约）条款是指这样的一项协定条款，即除非一国家明示表示在一定期间内不受这些条款约束的意图，否则其将受协定规定内容约束。”

有很多明确的选择退出机制的先例，特别是国际劳工组织（ILO）和欧洲委员会所采用的一些协定中。选择退出机制可被限制仅在特定期内有效。

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国际劳动公约第六十三号：关于工资及工作时间的统计（1938 年）
in part, through the use of explicit opt-out mechanisms foreseen by the treaty, the formulation of reservations, or the use of other mechanisms such as derogations, waivers and restrictions.

"According to a widely accepted definition, an exclusionary or opting-out (or contracting-out) clause is a treaty provision by which a State will be bound by rules contained in the treaty unless it expresses its intent not to be bound, within a certain period of time, by some of those provisions."1

There are many precedents of explicit opt-out mechanisms, in particular in the treaties adopted under the auspices of the ILO and the Council of Europe. Opt-out mechanisms can be limited to a defined period of time.

International Labour Convention No. 63 concerning statistics of wages and hours of work (1938)

Article 2(1): "Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude from its acceptance of the Convention: (a) any one of Parts II, III or IV; or (b) Parts II and IV; or (c) Parts III and IV."

Convention for the Prevention of Pollution from Ships (1973)

Article 4(1): "A State may, at the time of signing, ratifying, accepting, approving or acceding to the present Convention, declare that it does not accept any one or all of Annexes III, IV and V (hereinafter referred to as "Optional Annexes") of the present Convention. Subject to the above, Parties to the Convention shall be bound by any Annex in its entirety."


Article 124 – Transitional Provision: "Notwithstanding article 12, paragraph 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1."

Even in cases where this type of explicit opt-out mechanism is not present, the formulation of reservations allows the possibility to opt-out from some provisions of a treaty.

A reservation is defined as a unilateral statement made by a State, when signing, ratifying, accepting, approving or acceding to a multilateral instrument, whereby it purports to exclude or to modify the legal effect of certain provisions of the Convention (cf. Articles 19 to 23 of the VCLT). To be permissible, a reservation should not be prohibited by the treaty and should not be incompatible with its object and purpose.

If the multilateral instrument is silent, it would in principle be possible for parties to formulate reservations to any of its substantive provisions. However, in the interests of preventing opting-out from core provisions, the multilateral instrument could allow the formulation of reservations only for certain provisions by setting out an exhaustive list of permitted reservations.
第 2 款第 1 款："任何成员国可以在批准本公约的同时，通过通知该批准的声明，对以下公约条款不予接受：(a) 第二部分、第三部分和第四部分的任何条款；或者 (b) 第二部分和第四部分；或者 (c) 第三部分和第四部分。"

船船防污染公约（1973 年）

第 14 款第 1 款："在签字、批准、接受、核准或加入本公约时，一国可以声明它不接受本公约的第三、第四和第五部分（以下简称“可选条款”）的其中一项或所有限制。除上述规定外，公约缔约国应对任何限制的全部约束。"

国际刑事法院规约（1998 年）

第 124 条——过渡条款："虽有第十二条第一款及第二款的规定，一国成为本公约缔约国时可以声明，在本公约对该国生效后七年之内，如果其国民被指控实施一项犯罪，或者有人被指控在其境内实施一项犯罪，该国不接受本法院对第十八条所列犯罪的管辖权。根据本条作出的声明可以随时撤回。在依照第一百二十三条第一款召开的审查会议上，应对本条规定进行审查。"

Article 30 – Reservations: “1. Any State, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:

a. not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;

b. not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

c. not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;

d. not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

2. No other reservation may be made.”

Convention on Cybercrime (2001)

Article 9 (4) – Offences related to child pornography: “Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d and e, and 2, subparagraphs b and e” to be read in connection with Article 42 – Reservations: “By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.”

A.2.2.2 Choice between alternative provisions

Parties could be given the choice:

i. Between specific alternative provisions (either/or)
税收征管互助公约（1988年）

第30条——保留意见："任何国家可在签署时或其后任何时候在其批准、接受或核准文书时，声明其保留以下权利：
a. 该国不提供针对第2条第1款b节所列的任何类别下缔约对方提供的协助，若该国未在第1条附录A所列示的此类别下包括任何国内税种；
b. 对于所有税种或只对于在第2条第1款所列的一个或多个税种，不就任何税务主张或执行或处罚提供帮助；
c. 对税务主张不提供协助，如果该主张在该国公约生效之日已存在，或者在该国以前根据上述a或b节作出过保留的情形下，在撤销关于该相关类税下税种的保留之日的税务主张；
d. 对于所有税种或只对于在第2条第1款所列的一个或多个税种，不提供文件服务或协助；
e. 不允许按照第17条第2款规定进行除等文件服务；

f. 按照2010年议定书修改的内容，公约在每个成员国生效的时间里，公约于第三年1月1日后开始的纳税年度内，在行政协助方面，按延伸第28条第2款；

h. 对于特定行政协助，适用第28条第2款，该行政协助覆盖的范围或事项为：缔约一方公约（如2010议定书所进行的修订）生效年度之前的第三年1月1日后开始的纳税年度。或者，若没有纳税年度，则为缔约一方公约（如2010议定书所进行的修订）生效年度之前的第三年1月1日后开始的征收。

2. 除此之外，缔约国不得保留其他权利。"

网络犯罪公约（2001年）

第9条第4款——关于修定有关罪行："对第1段d和e节，以及第2段b和e节，缔约国应当保留其不适用其全部或部分内容的权利。该条文应与第42条—保留条款结合起来阅读，即：任何国家在签署时或其后任何时候，声明其保留第四条第2款、第6条第3款，第9条第4款，第10条第3款，第11条第1款，第14条第3款，第22条第2款，第29条第4款以及第41条第1款的规定的保留条款。除此之外，缔约国不得保留其他权利。"

A.2.2.2 排除条款之间选择

缔约方可选择：
i. 特定替代条款之间（任一/或）
General Act for Conciliation, Judicial Settlement and Arbitration (1928)

Article 38(1): “Accessions to the present General Act may extend: (a) Either to all the provisions of the Act (chapters I, II, III and IV); (b) Or to those provisions only which relate to conciliation and judicial settlement (chapters I and II), together with the general provisions dealing with these procedures (Chapter IV).”

ILO Convention No. 96 (revised) concerning Fee-Charging Employment Agencies (1949)

Article 2(1): “Each Member ratifying this Convention shall indicate in its instrument of ratification whether it accepts the provisions of part II of the Convention, providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies, or the provisions of part III, providing for the regulation of fee-charging employment agencies including agencies conducted with a view to profit.”

ii. Among a list of provisions with a defined minimum

Convention No. 102 concerning Minimum Standards of Social Security (1952)

Article 2: “Each Member for which this Convention is in force: (a) shall comply with: (i) Part I; (ii) at least three of Parts II, III, IV, V, VI, VII, VIII, IX and X; (iii) the relevant provisions of Parts XI, XII and XIII; and (iv) Part XIV.”

European Social Charter (1961)

Article 20(1) – Undertakings: “Each of the Contracting Parties undertakes: (a) To consider part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part; (b) To consider itself bound by at least five of the following articles of part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19; (c) [... ] to consider itself bound by such a number of articles or numbered paragraphs of part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs.”

European Charter for Regional or Minority Languages (1992)

Article 2 – Undertakings: “I. Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1. 2. In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.”

Bali Agreement on Trade Facilitation (2013)

Article 7.3. – Trade Facilitation Measures for Authorized Operators: “The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures: a. low documentary and data requirements as appropriate; b. low rate of physical inspections and examinations as appropriate; c. rapid release time as appropriate; d. deferred payment of duties, taxes, fees and charges; e. use of comprehensive guarantees or reduced guarantees; f. a single customs declaration for all imports or exports in a given period; and g. clearance of goods at the premises of the authorized operator or another place authorized by customs.”
关于调解，司法判决与仲裁的总条例（1928 年）
第 38 条第 1 款：  “对本条例的规定在延至： A. 本条例各项规定（第一、二、三、四章）； B. 或者只涉及调解和司法解决的规定（第一和第二章），以及处理这些程序的一般规定（第四章）。”

国际劳工组织关于收费职业介绍机构第 96 号公约（修订）（1949 年）
第 2 条第 1 款： “保证该公约的各成员国应在其批准书中表明是否接受公约第二部分的规定，即逐步取消由组织的收费职业介绍机构以及其他机构互相的协定，或者第三部分的规定，即对包括这些收费职业介绍机构在内的该类机构的监管。”

ii. 具有最低限制的一系列条款之问

最低社会保障标准第 102 号公约（1952 年）
第 2 条： “适用本公约的各成员国承诺： (a) 将会遵守； (ii) 第一部分； (ii) 第二、三、四、五、六、七、八、九、十部分中至少三个部分。其中至少包含第四、五、六、九和十一部分中的一个部分； (iii) 第十一、十二、十三部分的相关条款，和 (iv) 第十四部分。”

欧洲社会宪章（1961 年）
第 20 条第 1 款——承诺： “每一缔约方承诺： (a) 按照第一部分中的序言所述，将考虑到本宪章的第一部分应具备一切适当手段实施的条款。 (b) 将考虑本宪章第二部分下条款中，至少五个条款的约束：第 5、6、12、13、16 和 19 条。 (c) (i) 在有限制条款下，不小于 10 条或 45 条的章程下，将考虑选择宪章第二部分的任何条款并受其约束。”

欧洲区域或少数民族语言宪章（1992 年）
第 2 条——承诺： “1. 每一缔约方承诺对于在其领土上使用的符合第 1.2 条的定义范围内的地区和少数民族语言，适用第二部分的规定。2. 按照第 3 条，针对在批准、接受或协议时所明确的每种语言，各缔约方承诺遵循适用宪章第三部分内容中至少 35 条或节，其中包括从第 8 条和第 12 条中分别选出至少三段，以及从第 9、10、11 和 13 条中分别选出一段。”

巴厘岛贸易便利化协议（2013 年）
第 7.3 条——被授权的操作员可使用的贸易便利化措施： “根据第 7.1 段提供的贸易便利化措施，至少应包括 3 项下述措施：a. 适当的货物和数据要求；b. 适当的现场检查期；c. 适当的快速放行时间；d. 提高关税、税费、费用及费用的支付；e. 采用全面担保或降低要求的担保；f. 在一定时期内所有进口或出口货物的单一报告单；和 g. 被授权的操作员所在地或海关授权的另一处进行货物通关。”
A.2.2.3 Opt-in mechanisms

Opt-in (or contracting-in) mechanisms are defined "as provisions stipulating that the parties to a treaty may accept obligations which, in the absence of explicit acceptance, would not be automatically applicable to them".14 The goal of such mechanisms is to allow parties which are ready to do so to commit to further action in pursuit of the objectives of the treaty.

When parties are given the choice between alternative provisions (see section A.2.2.2 above), they will opt-in to additional commitments if they go beyond the defined minimum number of commitments and choose to be bound by a larger set of provisions.

Parties can also be offered the possibility to accept being bound by specific and clearly identified provisions through a unilateral declaration.

Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations (1973)

Article 25: "Any Contracting State may, at any time, declare that the provisions of this Convention will be extended, in relation to other States making a declaration under this Article, to an official deed ('acte authentique') drawn up by or before an authority or public official and directly enforceable in the State of origin insofar as these provisions can be applied to such deeds."


Article 10(6) – Promotion, protection and treatment of investments: "(a) A Contracting Party may, as regards the Making of Investments in its Area, at any time declare voluntarily to the Charter Conference, through the Secretariat, its intention not to introduce new exceptions to the Treatment described in paragraph (3). (b) A Contracting Party may, furthermore, at any time make a voluntary commitment to accord to investors of other Contracting Parties, as regards the Making of Investments in some or all Economic Activities in the Energy Sector in its Area, the Treatment described in paragraph (3). Such commitments shall be notified to the Secretariat and listed in Annex VC and shall be binding under this Treaty."

International Covenant on Civil and Political Rights (1966)

Article 41(1): "A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. [...]

Another way for parties to opt-in to additional commitments is through the conclusion of optional protocols to the multilateral instrument, which can be opened for signature at the same time or after the entry into force of the main treaty.
A.2.2.3 选择加入机制

选择加入（或者加入合约）机制可定义为，"规定合约方没有明确地接受，则该义务不会自动适用于他们的条款。" 这种机制的目的在于，允许首先签订该合约的方在朝着协定目标发展时，承诺采用进一步的行动。

当缔约方可在替代条款（见上方第A.2.2.2章）之间进行选择时，如果他们超出承诺所限定的最小数目，并选择较宽范围的条款约束，他们可以选择加入新的承诺。

缔约方也应有选择在具体且明确的单方声明约束的可能性。

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关于执行义务判决的承认与执行的多头公约（1973年）

第25条："任何缔约方可以在任何时候声明，在同样根据本条款规定发表声明的国家之间，将公约各条款扩展使用至主管机关或政府官员所签署或在他们面前达成的，并可直接依据违约的正式文件，但以这些条款可适用于这种文件为限。"

能源宪章条约（1994年）

第10条第6款——投资促进、保护及待遇："（a）在任何时候，对于其境内进行的投资，缔约方都可以自愿通过秘书处向能源宪章大会声明它不会对第3款中规定的待遇引人的例外。 （b）另外，对于在其境内能源行业进行的任何或全部的经济活动，缔约方可以在任何时候作出自愿承诺，给予其他缔约方的投资者在第3款中规定的待遇，这样的承诺将通知给秘书处，并且在附录VC中列出，以及受本条约约束。"

公民权利和政治权利国际公约（1966年）

第41条第1款："本公约缔约国可按照本条所规定，随时声明它承认委员会有权接受和审议—缔约国指控另一缔约国不履行它在本公约下的义务的委员会。按照本条所作的声明，必须依照声明起该本身承认为双方的缔约国所提出的，才能加以接受和审议。任何尚未作出这种声明的缔约国所提出的委员会不得接受。"

另—个缔约方可以选择加入新承诺的方式是通过签订多边协议的可选择定书进行，其可在协定生效时或随后签署。

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European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Almost all Parties to the 1950 Convention have signed and ratified Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty (1983) which goes beyond the main instrument by stating that “death penalty shall be abolished” by the Parties.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

Article 6: “1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article I, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.”

Article 7(1): “The present Protocol is open for signature by any State that has signed the Covenant. 2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it [...].”


Article 9(1): “The present Protocol is open for signature by any State that is a party to the Convention or has signed it [...].”

A.2.2.4 In-built flexibility in the formulation of provisions

Finally, the level of commitment of the parties with regard to specific provisions can depend on the wording used and on the type of obligations.

i. Wording

Within the same treaty, the level of commitment can be adjusted between different provisions and depending on the objective of a treaty:

- strong wording: “will”, “shall”, “must”, “undertakes to”
- more flexible wording: “may”, “as necessary/appropriate”, “should consider”, “take steps to”, “with a view to”, “including by”.


Article 13 – Documents accompanying the request: “1. The request for administrative assistance under this section shall be accompanied by [...]. 2. The instrument permitting enforcement of the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.”


Article 125 – Cooperation of States bordering enclosed or semi-enclosed seas: “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the
欧洲保障人权和基本自由公约（1950年）

几乎所有1950年公约各方均已经签署并批准了保障人权和基本自由公约关于废除死刑的6号议定书（1983年），各缔约方均声明“死刑应当被废除”从而使得该议定书超出了公约原有范围。

旨在废除死刑的公民权利和政治权利国际公约的第二份可选议定书（1989年）

第6条：1. 本议定书的条款应当被视作原公约的补充条款。2. 在不与本议定书第一条下的保留规定相抵触的前提下，本议定书中的第一条第一款不应当原公约第四条规定的任何限制。

第7条第1款：本议定书对任何签署并已批准或已加入公约的国家进行批准。

关于儿童参与武装冲突其权利公约的可选议定书（2000年）

第9条第1款：本议定书对任何签署并已批准或已签署公约的各方开放。

A.2.2.4 制定条款时的内置弹性

最后，各方就具体条款的承诺水平可取决于所使用的措辞和义务类型。

l. 措辞

在同一协议中，承诺水平可在不同条款之间进行调节，并且取决于协议的目标。

强硬措辞："会"，"应当"，"必须"，"承诺"。

较有灵活性措辞："可"，"必要时"，"应当考虑"，"采取步骤"，"为了"，"包括"。

税收征管互助公约（1988年）

第13条——请求附随文件：1. 根据本公约提出的行政协助请求附随时；2. 按照被请求国生效规定且在恰当时，被请求国应当在收到协助请求后尽快接收、承认、补充或替代被请求国的允许执行请求文书，

联合国海洋法公约（1982年）

第123条——闭海或半闭海沿岸国的合作："闭海或半闭海沿岸国在行使和履行本公约所规定的权利和义务时，应互相合作。"
performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.”

ii. Type of obligations

It is also possible for different provisions to provide for different types of obligations:

Obligations of result: parties are bound to achieve a particular outcome.


Article 1 – Objective: “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

Obligations of means/conduct: parties are bound to strive or endeavour to achieve an outcome.


Article 194 – Measures to prevent, reduce and control pollution of the marine environment: “1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.”

Or both: parties are bound to achieve a particular outcome in a particular way.

A.3 A multilateral instrument can ensure transparency and clarity of commitments

Given the practical consequences of changes to the rules in the field of international taxation, it is vital to ensure that the rights and obligations of parties to the multilateral instrument are clearly understood by all stakeholders, i.e. national tax administrations, taxpayers and third parties.
为此目的，这些国家应尽力直接或通过适当的区域组织：（a）协调海洋生物资源的管理、保存、勘探和利用；（b）协调执行其在保护和保持海洋环境方面的权利和义务；（c）协调其科学研究政策，并在适当情形下在该地区进行联合科学研究项目；（d）在适当情形下，邀请其他有关利害关系国家或国际组织与其合作以推行本条的规定。

ii. 义务类型

不同条款也可能产生不同的义务类型。

结果的义务：各方势必达成特定成果。

环境事项信息获取、公众决策参与及司法公正公约（1998年）

第1条——目标: “为了能够保护每一个人现今及未来子孙后代能够安全在一个能充分给予其健康及幸福的环境中，各缔约方均需依本公约条款保障环境事项的信息获取、公众决策参与及司法公正。”

方式/行为的义务：各方势必努力或尽力取得成果。

联合国海洋法公约（1982年）

第194条——防止、减少和控制海洋环境污染的措施：1. 各国应采取一切符合本公约的必要措施，防止、减少和控制任何来源的海洋环境污染，为达成此目的，各国应按照其能力使用其所掌握的最切实可行的方法，并应在这方面尽力协调它们的政策。2. 各国应采取一切必要措施，确保在其管辖或控制下进行的活动不会导致其他国家及其环境遭受损害，并确保在其管辖或控制范围内事故或活动所造成的污染不会扩大至其按照本公约行使主权权利的海域之外。

或两者皆包含：各方势必以特定方式取得特定成果。

A.3 多边协议可确保承诺的透明度和清晰度

鉴于国际税收领域规则变化在实践中的重大影响，确保所有利益相关者清楚了解缔约者在多边协议中的权利义务是很重要的，例如：国家税收管理方、纳税人，以及第三方。
Beyond the publicity surrounding the work on BEPS and any resulting multilateral instrument, further steps will be needed to ensure that the modifications to existing bilateral tax treaties and the level of commitment undertaken by the parties are clear and transparent. A related question is differences in official languages between the bilateral tax treaties and the multilateral instrument. As set out below, there are various tools which could be used to address these issues.

The mechanisms described in section A.1.5 above to ensure consistency in interpretation and implementation (interpretative guidance, discussions between parties on implementation) will also be important in order to ensure transparency and clarity vis-à-vis all stakeholders.

A.3.1 Tools to ensure transparency and clarity

Different tools exist in order to ensure transparency and clarity of the commitments undertaken by parties to the multilateral instrument in two respects:

First, on how the multilateral instrument has modified in concrete terms the provisions of existing bilateral tax treaties.

Second, on the level of commitment undertaken by parties in cases where the multilateral instrument offers flexibility as described in section A.2 above.

A.3.1.1 Publication of consolidated versions

Consolidated versions of bilateral treaties could be prepared and published by parties in conjunction with the depositary of the multilateral instrument.

The consolidated version would reflect the concrete changes made to the existing bilateral tax treaty and, where appropriate, the level of commitment undertaken by parties in cases where the multilateral instrument allows defined flexibility. The formatting of the text could draw attention to the changes.

The preparation of the consolidated versions would be for transparency purposes and would not affect the date of legal effect of the modifications to the bilateral treaties which would be the date of the entry into force of the multilateral instrument.

In order to provide the necessary information to all relevant stakeholders, the consolidated versions of the bilateral tax treaties could be included in publicly accessible databases.

A.3.1.2 Notifications and communications

The depositary of the multilateral instrument can play a key role since it is in charge of “receiving and keeping custody of any instruments, notifications and communications”13 relating to the treaty as well as of “informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty”16.

i. Notifications by the parties to the depositary of the multilateral instrument

Notifications could contain information related to:

modifications of the provisions of the bilateral tax treaties

As an alternative to consolidated versions of bilateral tax treaties, it would be possible to require written notifications to the depositary of the multilateral instrument by the parties to bilateral treaties setting out the effect of the entry into force of the multilateral instrument on the application of the provisions of the bilateral treaty.
除了税基侵蚀和利润转移以及由此产生的多边协议的公囹性之外，还需要采取进一步的行动以确保对双边税收协定的修订和缔约方承诺水平是清晰且透明的。一个相关的问题是，双边税收协定和多边协议所使用官方语言的差异。如下所述，有各种工具可以用以解决此问题。

上方第A.1.5.5.条所描述的用以确保解读和实施的一致性的机制（解释性指导，即双方就实施方面的讨论），同时也在确保面向各方利益相关者的透明度和清晰度中扮演重要角色。

A.3.1 确保透明度和清晰度的工具

不同的工具从下述两个方面确保多边协议缔约方承诺的透明度和清晰度：

第一，多边协议如何以具体术语修订现存双边税收协定中的条款。

第二，在多边协议提供上方第A.2章所述的弹性时，缔约方所作出的承诺水平。

A.3.1.1 综合版本的出版

缔约方可联合多边协议保存人编撰并发布双边协定的综合版本。

综合版本将反映对现存双边税收协定的结构，以及在恰当时，反映在多边协议允许一定程度灵活性的情况下各缔约方承诺水平。文件的格式可使得改变引人注意。

编撰综合版本的目的是确保透明度，并不会影响双边协定修订产生法律效力的日期，即多边协议开始生效的日期。

为向所有相关利益者提供必要信息，双边税收协定综合版本可置于可公开访问的数据库内。

A.3.1.2 通知与交流

多边协议的保存人可能扮演着关键的角色。因为它负责接收与保管与协定有关的“工具、通知和交流”。“并且“通知缔约方和所有其他成为协定缔约方国家，关于协定行为，通知与交流的内容”。”

i. 各方向多边协议保存人传达的通知

通知可包含的信息包括：

双边税收协定条款的修订

作为双边税收协定综合版本的替代方案，双边协定的缔约方可向多边协议保存人要求书面通知，该通知应列明多边协议生效对于双边协定条款应用的影响。
Agreement on extradition between the European Union and the United States of America (2003)

Article 3(2): "(a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral extradition treaty in force with the United States of America."

Level of commitment undertaken by the parties.

In certain cases, for example for reservations, it is well-established that these opt-out measures are communicated to the depositary which then notifies all parties to the treaty. The depositaries can also be asked to notify all or certain communications to a larger group than the parties to the treaty.

The same method could be adopted for other opt-out, choice of alternative provisions and opt-in measures. Accordingly, the multilateral instrument could specify that, upon ratification, each party must communicate the necessary information on all such measures to the depositary which will duly notify all parties.


Article 311(4) – Relation to other conventions and international agreements: "States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides."


Article 2 – Taxes covered: "2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the 'Depositaries') of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary."


Article 3(3): "2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced."

Article 9(3): "The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3."

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欧盟与美国引渡协议（2003 年）

第 3 条第 2 款： “（a）依照欧盟间的协定，欧盟应当确保每一个成员国都应在该成员国与美国的书面文字中，对按照本条文规定的方式适用该成员国与美国之间生效双边引渡协议进行告知。”

各缔约方的承诺水平。

在一些情况下，例如关于保密意见，欧盟法律是将这些选择退出措施传达给保存人，由保存人随后通知所有其他缔约方，也可要求保存人向缔约方更大范围的群体通知所有或某些交流内容。

同样的方法可用于其他的选择退出机制，替代条款的选择和选择加入措施。因此多边协议可特别指明，一经批准，每一缔约方必须将关于这些措施的必要信息传达给保存人，保存人随后来及时通知所有缔约方。

联合国海洋法公约（1982 年）

第 311 条第 4 款——与其他公约及国际协议的关系：“在签订第 3 条第 3 款所指任何协议的缔约国，应通知本公约的保存人将其签订协议的意图及该协议的修订或暂停适用内容通知其他缔约国。”

税收征管互助公约（1988 年）

第 2 条——税种范围：“2. 本公约适用于现行税种，列示于本公约附件 A 中第一款所指的类别下。3. 对第二条所指列表进行修订或导致附件 A 任何变动的，缔约各方应通知欧洲理事会秘书长或 OECD 秘书长（以下简称“保存人”）。此变动应在保存人收到上述通知之日起三个月后的次月第一天起生效。”

关于儿童参与武装冲突及其权利可选议定书（2000 年）

第 3 条第 3 款： “各缔约国在批准或加入议定书时，应当做出一份具有约束力的声明，说明它一个自自愿投降本冲突武装集团的最低年龄以及如无法确保该类人员基本安全所采取的防护措施。”

第 9 条第 3 款： “秘书长，若作为公约和议定书的保存人能力范围之内，应当向公约各缔约国以及已经签署公约的国家，通知在第三条下声明的各项文书。”
ii. Communications by the depositary to other parties and relevant stakeholders

In accordance with its obligations under public international law, all notifications received by the depositary will be communicated to the other parties to the multilateral instrument.

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties (1979)

Article 16 – Languages of the convention and notifications: “1. This Convention shall be signed in a single copy in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative. 2. Official texts shall be established by the Director General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, after consultation with the interested Governments concerned, in the German, Italian and Portuguese languages.”

Other relevant stakeholders could be given the possibility to subscribe to an automatic notification system to ensure that they receive the information as soon as it is notified by the depositary. Depositaries to multilateral instruments often set up publicly accessible electronic databases or webpages with all relevant communications from parties (e.g. United Nations Treaty Collection, Council of Europe Treaty Office) and a system of subscriptions to electronic alerts when new documents are added. This would permit all stakeholders to easily access information about the commitments undertaken by each party to the multilateral instrument.

A.3.2 Language versions

Given that the multilateral instrument would modify a network of bilateral tax treaties, it is important to consider the question of the official languages of the multilateral instrument. For practical reasons, multilateral instruments are only negotiated and signed in a limited number of languages.

Bilateral treaties are usually authenticated in the official language(s) of the pair of parties. Accordingly, the authentic language(s) of bilateral treaties may be different from the language(s) in which the multilateral instrument will be authenticated. It would be possible for official texts in other languages to be established after the signature of the multilateral instrument.

However, from a practical point of view, it may not be possible to have official texts of the multilateral instrument in all the languages used in bilateral tax treaties. There are many precedents where this difference of languages arises and there are ways to address this. It is important to note that the translation of universal treaties (such as universal human right treaties applied by domestic administrations and tribunals worldwide) to all languages beyond the authentic languages of the multilateral treaty is very common and has created no major difficulties.

It would be possible for unofficial translations of the multilateral instrument to be prepared by:

Individual parties, whose official language is not one of the authentic languages of the multilateral treaty. In most cases, translations will need to be undertaken in any case in order for jurisdictions to complete their domestic requirements to become parties.
ii. 保存人与其他各方及利益相关者的交流

基于其在国际公法下的义务，保存人所收到的所有通知，必须向多边协议其他缔约方传达交流。

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避免重复征税多边公约（1979年）

第16条——公约及通知的语言：“（1）本公约应以中、英文、法文、俄文和西班牙文五种文字的统一文本上签署，五种文字具有同等效力。 （2）德文、意大利文和葡萄牙文的官方文本应由联合国教育科学文化组织总办事处世界知识产权组织总办事处与有关政府协商后确定。”

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其他相关利益相关者，可订阅自动通知系统，或确保在保存人通知通知时即可收到相关信息。多边协议保存人通常建立公众可访问的电子数据库或网页，以展示所有缔约方的相关交流信息（例如：联合国协定搜索处，欧洲理事会协定办公室），有关编写一套新资料时可自动提示的订阅系统。这将使所有利益相关者便捷的访问多边协议各方所作出的承诺信息。

A.3.2 语言版本

鉴于多边协议将修订双边税收协定网络，因此考虑多边协议的官方语言是重要的。出于实际使用的考虑，多边协议将仅在限定数目的语言下进行商议和签署。

双边协定通常以缔约双方的官方语言（一种或几种）进行认证。相应的，用以认证双边协定的语言可能与用以认证多边协议的语言不同。待多边协议签署后，再用其他语言撰写正式文本是允许的。

然而从实用性观点来看，以双边税收协定使用的所有语言来撰写多边协议方文本是不太可能的。在很多先例中，产生了不同语言的差异但有相应的解决办法。值得注意的是，将通用协定（例如适用于国内管理部门和世界各地法院的通用人权协定）翻译成多边协定认证语言以外的语言是很普遍的，且未产生重大困难。

以下各方可撰写多边协议的非官方翻译版：

官方语言并非多边协议认证语言的个别缔约方。在多数情况下，为使参与国完成其国内程序而成为缔约方，进行相应的翻译是有必要的。
Several parties to the multilateral instrument, which could collaborate in order to agree on a translation in their common language. There are concrete examples of collaboration to prepare an unofficial but co-ordinated translation of a multilateral treaty (e.g., Austria and Germany agreed on a German translation of the MAC).

The depositary, which could publish unofficial translation of the multilateral instrument (e.g., MAC’s unofficial Spanish and Portuguese translations).

A mechanism could also be created to address any discrepancies which are identified subsequently between the official languages of the multilateral instrument and/or its unofficial translations.

Conclusion

This annex concludes that a multilateral instrument to implement the measures developed in the course of the work on BEPS is feasible and, moreover, would be the most efficient way to modify the existing network of bilateral tax treaties. A multilateral instrument offers an expansive and adaptable toolkit: once the substantive measures have been agreed, all the necessary mechanisms are at our disposal to reflect them as multilateral undertakings while providing defined flexibility in the level of commitment if necessary. The need for transparency and clarity of commitments undertaken by States and their effects on bilateral tax treaties can be addressed through well-tested solutions drawing on treaty law and practice.

Once a decision has been taken to work towards a multilateral instrument, the options set out in this paper can be further developed and specified in order to support the negotiation. It will be essential for international tax experts and public international law experts to continue working hand in hand in developing the multilateral instrument in order to draw on the existing treaty law and practice while respecting the specificities of the tax field.
多边协议的一些缔约方，它们可以互相合作以通过共同的语言下的译本。在一些具体的例子中，对多边协定进行了非官方但是各缔约国协调合作完成的翻译（例如：澳大利亚和德国同意使用德语翻译 MAC）。

保存人，可发布多边协议的非官方翻译版（例如：MAC的非官方西班牙文和葡萄牙文翻译版）。

也可建立一套用以解释随后产生的多边协议官方语言和/或非官方翻译版之间差异的机制。

结论

本报告的结论为：将多边协议用于实施税收侵蚀和利润转移工作过程中采取的各项措施是可行的，且是修订现有双边税收协定网络的最有效率的方法。多边协议将提供一个广泛且适应性强的工具包；即一旦通过实质性措施，所有必要机制将在实施下体现为多边承诺，同时在必要时提供缔约方承诺水平下的规定弹性。缔约国承诺透明度和清晰度的必要性，以及对双边协定的影响，均可通过基于协定法规和实践且经过测试的方案来寻求解决。

一旦决定朝着多边协力发展，本报告提出的选项便可以进一步发展和细化以支持相关协商。国际税务专家和国际公法专家在发展多边协定领域继续通力合作是非常关键的，以利用现有的税收协定法规和实践，同时尊重税务领域的独特性。
Notes

1. Article 2(1)(a) of the VCLT.

2. Philip Baker (United Kingdom), Théodore Christakis (Greece), Frank Engelen (Netherlands), Concepción Escobar Hernández (Spain), Mathias Forteau (France), Itai Grinberg (United States), Jan Klabbers (Netherlands), Vaughan Lowe (United Kingdom), Philippe Martin (France), Yoshihiro Masui (Japan), Elkehart Raimer (Germany), Giorgio Sacerdoti (Italy), Dire Tladi (South Africa).

3. The same analysis applies to regional tax treaties such as the Nordic Convention with respect to Taxes on Income and Capital, the Andean Community Income and Capital Tax Treaty, and the Arab Maghreb Union Income Tax Treaty.

4. Article 30 of the VCLT – Application of successive treaties relating to the same subject-matter: "3. When all the parties to the earlier treaty are parties to the later treaty the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."

5. The bilateral treaties concluded between the United States (US) and the EU members prior to the entry into force of the EU-US Agreement are still in force.

6. Article 41 of the VCLT – Agreements to modify multilateral treaties between certain of the parties only: "1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if: (a) the possibility of such a modification is provided for by the treaty; or (b) the modification in question is not prohibited by the treaty and: (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of any of their obligations; (ii) does not relate to a provision derogating from which is incompatible with the effective execution of the object and purpose of the treaty as a whole. 2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides."

7. Malcolm N. Shaw, International Law, Cambridge, Sixth Edition, 2008, p. 910: "The consent of the states parties to the treaty in question is a vital factor, since states may ... be bound only by their consent. Treaties are in this sense contracts between states and if they do not receive the consent of the various states, their provisions will not be binding on them."

8. Article 34 of the VCLT – General rule regarding third States.

9. Article 35 of the VCLT – Treaties providing for obligations for third States.


11. Article 40(4) of the VCLT


13. Paragraph 1 of the Commentary to Guideline 1.1.6 of the Guide to Practice dedicated to "Reservations formulated by virtue of clauses expressly authorizing the exclusion or the modification of certain provisions of the treaty". According to this Guideline: "A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty with regard to
注释

1. VCLT 第 2(1)(a) 条。

2. Philip Baker (英国), Théodore Christakis (希腊), Frank Engelen (荷兰), Gonzalo Án Escobar Hernandez (西班牙), Mathias Forstew (法国), Iuri Grinberg (美国), Jan Klabbers (荷兰), Vaughan Lowe (英国), Philippe Martin (法国), Yoshiro Masui (日本), Ekkehart Reime (德国), Giorgio Sacerdoti (意大利), Dire Tladi (南非)。

3. 地区税收协定也适用相同的分析。例如：有关所得税及利得税的北欧公约、安第斯共同体所得税及资本利得税税收协定，和阿拉伯马格里布联盟所得税税收协定。

4. VCLT 第 30 条——涉及同一事项连续协定的适用原则：“3. 当较早签署协定的缔约方与之后协定的缔约方一致，但较早的协定未在第 59 条下终止或暂停生效时，那么较早的协定条款可在与之后协定条款兼容的范围内适用。”

5. 美国和欧盟成员国在美国—欧盟协议生效前签署的双边协定仍将继续有效。

6. VCLT 第 41 条——仅在下列情况下，多边协定的修订可在有限的缔约国之间进行：“1. 如符合以下条件，多边协定的缔约方或多方，可仅在他们之间达成修订协定的协议：(a) 协定规定了此种修订的可能性；(b) 所涉及的修订不受协定限制且；(c) 不影响其他缔约方依协定可享受的权利或所应履行的义务；(d) 不涉及某些条款，即该条款的删除与协定目的与宗旨的整体有效达成相互违背。2. 除非符合第 1(a) 段协定的情况，否则相关缔约方应通知其他缔约方其修订协议的意图和对该协定的修订。”

7. Malcolm N. Shaw, 国际法, 剑桥, 第 6 版, 2008 年, 第 910 页：“各缔约国同意相关协定是一个重要因素，因这些国家可能……仅受其已同意内容的约束。协定在此意义上成为国家之间的契约，若未取其他多国同意，该条款将不对该他国产生约束力。”

8. VCLT 第 34 条——关于第三国的基本原则。

9. VCLT 第 35 条——协定规定第三国义务。


11. VCLT 第 40 条第 4 款
the party that has made the statement, constitutes a reservation expressly authorized by the treaty."

14. Paragraph 1 of the Commentary to Guideline 1.5.3 "Unilateral statements made under a clause providing for options".

15. Article 77(1)(c) of the VCLT – Functions of depositaries.

16. Article 77(1)(c) of the VCLT – Functions of depositaries.


Bibliography


13. 实践指南第1.1.6条评论第1段致力于“条款明示授权排除或修订特定内容所作保留措施”。根据该指南：“一国或多方国际组织当一致原则按照条约文本表达其同意被协定约束，该条款清楚授权一些或全部缔约方排除或修订某些协定条文对于作出声明的缔约方的法律效力，那么该国或该国际组织作出的单方面声明即构成协定条款的保留意见。”

14. 准则第1.5.3条的注释第1款“提供选项条款下的单方面声明”。

15. VCLT第77(1)(e)条——保存人的职能。

16. VCLT第77(1)(e)条——保存人的职能。


18. 欧盟理事会协定办公室，www.conventions.coe.int/。

参考文献

G20 (2009)，加强财政系统的宣言，伦敦峰会，2009年4月2日。
www.g20ys.org/upload/files/London_2.pdf。

OECD (2013)，税务侵蚀和利润转移行动计划，OECD出版，doi:
http://dx.doi.org/10.1787/9789264202719-en。