Multilateralism in the OECD BEPS initiative: A View from India¹

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Introduction

During the Peloponnesian war,² when the powerful Athenians met the weaker Thelians on the battlefield, the Thelians asked the Athenians to treat them justly. The Athenians famously proclaimed that justice prevailed only among the powerful (Benjamin Jowett, 1883). There was no justice for the weak.³ On the other hand, the Greeks were the forerunners in promoting the ideas of justice and a flourishing life in their cities. The implications of this contradictory approach were as clear then as it is at present. While members of political communities inter se act towards each other in terms of justice, there is no such requirement in international relations.

The world has come a long way since the Peloponnesian war. The history of recent global relations shows that principles of fair play and justice are quoted often in international relations as well, although there are dissenters who claim either that these principles are violated frequently or that even when such principles are used in official narratives, they serve as camouflage for more sinister designs. Even if it is conceded that fair play is an important element in international relations, national self-interest continues to exert a powerful force. Further, in a multi-polar world, forces of self-interest would result, by reason of multiple power centres, into relationships resembling a fair deal among members. The latter feature gives rise to the challenge of identifying precisely the interests of the players involved. To sum up, the first issue is whether it is possible at all for countries in the globalised world to enter into a collaborative rather than competitive co-existence. Second, assuming a collaborative co-existence is possible, how must the countries involved fashion the contours of this co-existence, especially from the point of view of a developing country such as India?
The debate in the OECD on a multilateral tax treaty must be analysed in this context. The OECD has drawn up several action plans to combat abusive tax transactions relating to permanent establishments, transfer pricing and hybrid arrangements. These are referred to as actions intended to solve the problem of base erosion and profits shifting (BEPS).\(^4\) The OECD would like to effectuate these plans through a multilateral instrument (operationalised under BEPS Action 15) that would simultaneously modify the bilateral treaties of the countries that sign the multilateral instrument. The OECD’s stated intention is to ensure that the effect of the BEPS initiative is operationalised with immediate effect instead of the anti-BEPS measures taking effect slowly over the years through bilateral arrangements (OECD Action 15 Report 2015).

With the advent of BEPS Action 15, an issue that is additional to the two identified above arises: to what extent is it feasible, practically and legally, for countries to abandon their traditional insistence on tax sovereignty and participate in a multilateral framework that would necessarily curtail their fiscal plans? The world has never seen any strong interest in tax multilateralism before, as most international law on taxation is contained in bilateral treaties. The European Union has made limited progress in addressing tax issues in the European Community and these issues have been at the margins rather than at the centre of tax policies of the constituent countries.

This essay provides an overview of the BEPS initiative in section 1, and sets out the primary activities envisaged as part of the multilateral treaty in Action 15. Section 2 considers the idea of multilateralism in international affairs, and considers critically the idea of ‘teamwork’ in international relations. Section 3 considers the problems associated with tax sovereignty and how this might impact OECD's efforts to introduce multilateralism in international tax law. Section 4 discusses the lessons for OECD multilateralism from India’s point of view, keeping in mind the possibility that, in international taxation, developing countries’ interests are not always aligned with the interests of developed countries.
1. Multilateralism in the BEPS initiative

The OECD BEPS initiative is multilateral in form but state-specific in content. It seeks to encourage states to make changes to their bilateral treaties in order to address tax planning abuses by multinationals but, at the same time, asks states to introduce their bilateral changes through a multilateral agreement. It encourages best practices in states to inspire other states but also wants the states to commit to a common, necessarily uniform approach to tax abuses by multinationals. It encourages states to develop domestic legislation to address tax abuses but would like domestic legislation to converge uniformly and collaboratively, addressing multi-nation tax issues, something that would require all states to look beyond domestic and bilateral concerns and move towards a multilateral framework and allied concerns.

The idea of multilateralism in tax law did not originate with the BEPS project. A decade and a half ago, there was a debate among tax scholars on the viability of a multilateral approach to tax relations between states, which, then and now, continues to be overwhelmingly bilateral in nature (Ring, 2001, Thuronyi, 2000-2001, Reinhold, 2004;). It was suggested that multilateral treaties would have the benefit of isolating tax havens, make competing tax demands between states the subject of negotiations rather than unilateral actions, and pave the way for international tax language to develop in a uniform and consistent manner (Reinhold, 2004). However, the discussions on multilateralism remained largely academic in the domain of tax law and would have continued to remain in cold storage but for the 2008-2009 global financial and economic crisis precipitating world-wide fiscal deficits, which created unprecedented political will among states led by the G20 to collectively address the problems of international tax avoidance, asking the OECD to undertake research on the matter that, in turn, led to the OECD BEPS initiative. The OECD BEPS initiative catalysed in response to some sensational media reports on the international tax avoidance techniques engaged by
powerful multinationals such as Apple, Google and Starbucks that reduced their (mainly US) tax liability significantly (Brauner, 2014). These companies were able to do so because of two interlocking characteristics of multinational tax planning. Their countries of residence as well as the countries in which they performed substantial business activities had international tax rules (domestically and bilaterally) that allowed the multinationals to claim extremely favourable tax positions that reduced their tax liabilities with respect to both their residence and host countries. Further, these multinationals were able to claim residence or business activities in low tax or nil tax countries in which they had little economic presence. Thus, the first characteristic was international tax abuse and the second characteristic was harmful tax competition among countries. Both problems together accounted for a mismatch between the place where the multinationals actually created value (which was then used to make profits) and the place where they claimed value was created. To a great extent, the practice prevails even today.

However, the value mismatch problems proposed to be tackled by OECD are not as recent as the events that precipitated it. In fact, the OECD had been concerned with abusive tax behaviour and harmful tax competition for quite some time.6 However, the recent disclosures of massive tax savings by companies along with the loss of tax revenues in developed countries due to the 2008-2009 global crisis resulted in a situation in which the G20 was aroused to act decisively and ask the OECD to rapidly develop and suggest international tax guidelines. In doing so, the OECD invited a number of developing countries to participate in the process.7

The OECD approach to the value mismatch problem in tax law is to develop principles of state action that would address tax issues through discrete topics or domains with the whole process culminating in a multinational treaty. The domains that have been identified by the OECD address tax issues arising out of digital technology, the use of hybrid instruments, controlled foreign corporations,8 permanent establishments, transfer pricing arrangements including the documentation relating to
transfer pricing, transparency in tax administration, dispute management and resolution and, finally, a multilateral agreement to address these issues. The OECD's approach towards these issues is, at least on paper, collaborative, holistic and innovative (Brauner, 2015).

The OECD has formally adopted multilateralism in Action 15, although the BEPS process on the whole could be considered as one of a series of efforts towards multilateralism in tax law. The G20 countries are collaborating with the OECD countries on the BEPS process. The OECD has had a successful uptake on its multilateral instrument on exchange of information and has made an attempt to involve a wider swathe of countries through its Global Forum on the Exchange of Information. However, it must be noted that multilateral efforts with an extremely narrow focus have their inherent limitations. For example, though some tax havens have very limited documentation requirements, a multilateral effort to wring out more information from these jurisdictions might be less fruitful than direct bilateral negotiations.

Action 15 does not have the objective of replacing bilateral treaties. Instead, it looks to put in place a set of commonly agreed mechanisms to combat tax abuse as well as ways to address new advances in business related technologies that would result in a set of simultaneous amendments to the current bilateral treaties of those countries that would sign on to BEPS Action 15. The OECD's view for a multilateral approach to bilateral treaties is to ensure speedy and efficient uptake of its proposed amendments, thus short-circuiting the often slow and ad hoc manner in which amendments to international tax arrangements occur through bilateral treaties. OECD's approach is politically sensitive as it is anticipated that countries would balk at replacing their bilateral tax obligations with multilateral tax obligations. Countries tend to perceive their bilateral obligations as an exercise of their sovereignty whereas multilateral obligations are perceived by countries as a surrender of their sovereignty.
Action 15 faces two kinds of challenges to its legitimacy and functioning. The first one is technical. Whatever might be the language of the final draft in the rest of the action plans, it is likely that some countries will disagree with some aspects of the proposed action points. Action 15 allows countries to make reservations and dissensions from the common language of the multilateral treaty, which is common practice in other international treaties. In fact, countries have been allowed to include dissenting notes to the OECD model treaty commentaries so as to preserve their preferred approach towards the interpretations of certain clauses. The OECD must ensure that the impact of the multilateral treaty is not rendered irrelevant because of either the number or wide amplitude of such reservations. It is a delicate diplomatic task, which cannot be quantified, but which nevertheless is important to preserve the integrity of the multilateral framework towards which the OECD intends to proceed.

However, the more important challenge is substantive. On the face of it, Action 15 appears to be merely the implementing arm of the previous fourteen action plans. Would Action 15 have the wherewithal to include genuine innovative negotiations or will it be confined to a mechanical rendering of the changes agreed to in the previous action plans? For example, there is a significant substantive issue regarding resolution of tax disputes as can be seen by the fact that the OECD has devoted a separate action plan to it. Therefore, it would be expected that there would be negotiations in the multilateral treaty process over the binding nature of dispute resolution procedures under bilateral treaties. Quite apart from this, do the multilateral treaty guidelines allow any flexibility for countries negotiating with each other and coming up with novel solutions to seemingly intractable problems?

There is today a considerable gulf between developed and developing countries over the solutions needed to solve the problem of transfer pricing. Developed countries continue to support the use of the arm’s length method to determine the price of product and service transfers within multinational
groups. The OECD BEPS initiative has, so far, continued with this approach. Efforts within the BEPS initiative to address transfer pricing abuses have occurred through the prism of arm’s length pricing such that the proposed amendments only aim to modify arm’s length pricing, not replace it. On the other hand, many developing countries would like to apply a formulary or unitary approach to transfer pricing, treating the various corporate sub-divisions of a multinational as one entity and allocating profits among the sub-divisions on the basis of factors that include the location of employees and consumers.

The two approaches mentioned above constitute a fundamental divergence of opinion between developed and developing countries. However, this divergence has arisen in discussions on the other BEP Actions as well, and gives rise to the question whether Action 15 can be the site where states have the opportunity to negotiate on international tax issues that arise under the BEPS initiatives. As already indicated, Action 15 is structured in a way to implement, not discuss afresh, the complex discussions that have taken place in other action plans. For example, the action plans dedicated to transfer pricing techniques and accompanying documentation have focussed on the primacy of arm’s length pricing and it could be argued that developing countries would be impeding the smooth progress of the BEPS initiative if they raise once again a fundamental issue of international taxation at the implementation stage of BEPS measures.

The language of Action 15 allows for negotiations but it appears to limit these negotiations to ensuring that the anti-BEPS measures adopted through the multilateral treaty would be technically consistent with the extant terms in the bilateral treaties. However, it has also been suggested that several nation states may not want the same precise obligations towards every other nation and, therefore, any negotiating process would have to maintain a delicate balance between certainty (uniform set of rules), transparency (the same set of rules to the extent possible for all parties) and flexibility (recognition of the fact that a nation state may want a different set of obligations vis-à-vis different
nation states). This latter approach appears to favour substantive discussions as the negotiations over acceptable language would involve inevitably discussions on tax issues regarding which the countries have substantive differences, although it must be acknowledged that the expectation is that the most problematic substantive conflicts would have been resolved before negotiations on the multilateral treaty.

Another issue is how targeting only tax treaties has been addressed without looking into domestic tax issues. Action 15 is clear that, in order to respect tax sovereignty of states, the multilateral tax treaty will not require any changes to a country's domestic tax law. This approach has two implications. It does not really achieve its purpose of respecting the tax autonomy of states because, in most countries, bilateral treaties (that are being amended by the multilateral treaty) trump their respective domestic laws. Further, domestic issues – for example, domestic rules on the classification of different kinds of income – are, in any case, potentially key to the success of BEPS, and, therefore, confining the agreement on BEPS measures to treaty issues might not be a comprehensive approach to international tax abuse.

At the same time, as Action 15 proposes to amend bilateral treaties through a multilateral amendment, it also posits that there are certain matters on which a multilateral rather than a bilateral approach is the best way forward. Multilateral solutions to international tax abuse are available for issues relating to triangular transactions, hybrid entities and mutual assessment procedure (MAP) to resolve tax disputes where multinationals are engaged in business activities in multiple jurisdictions (OECD BEPS Action 15 Final Report, 2015). The reference to multilateral solutions demonstrates the potentially wide reach of the proposed multilateral treaty as well as the problems this might create in terms of the infringement of states’ sense of their own sovereignty.
The final form of the multilateral treaty will address the inclusion of provisions that are typically associated with international treaties. The contracting parties will be allowed to opt out of provisions that they consider too onerous or to enter reservations against clauses that they will not like to comply with. The contracting parties also will be allowed to opt into more demanding provisions once the parties consider it feasible to do so. The language of the multilateral treaty laying out the obligations of the parties will be critical to the success of the multilateral treaty. There is evidence from current international treaties that the state obligations can be made tightly binding or loosely applicable depending on the political will of the states (Guzman, 2005). Whether the OECD multilateral treaty will ultimately impose strict substantive and monitoring obligations on the states is a question that has not been settled yet. The multilateral treaty will also contain compatibility clauses which will explicitly define the relationship between the multilateral treaties and existing and future bilateral treaties. The purposes of the compatibility clauses will be to ensure that the countries that sign to the multilateral agreement commit themselves to observing their multilateral obligations despite inconsistencies with their existing bilateral obligations or pressures (domestic and external) to sign incompatible bilateral treaties in the future.12

Action 15 needs to be understood in the context of other initiatives by the OECD. The OECD has been promoting a multilateral convention since the 2008 financial crisis on the exchange of information that has recently received traction and has been signed by a large number of countries. The OECD has also promoted Country-by-Country reporting (CbC), which would be executed through three mechanisms. The first is a master file, which would display the global commercial attributes of the business entity such as its major profit making activities, its supply chains and the financial attributes of the corporate entities within the multinational group.13 The OECD expects that the master file would be filed with the tax authorities in all the jurisdictions in which the multinational conducts its business. The second mechanism is a local file, which is specific to a particular jurisdiction (nation state), and would contain information about the scale of operation in the country
including the management structure and business strategy of local operations and intra-group operations (‘controlled transactions’) with respect to the local jurisdiction. The third mechanism is the CbC report, which mentions the global allocation of taxes paid by the company taking into account all the jurisdictions that the company operates in. The new documentation standards might be incorporated in the multilateral instrument. However, even if the multilateral instrument does not do so, it is expected that many states would adopt the documentation standards in any case.¹⁴

The OECD has also promoted the possibility of mandatory arbitration under the mutual assistance procedure to settle disputes between contracting states in the event of a transfer pricing adjustment. The settlement of disputes between contracting states involves identifying independent dispute resolution authorities, encouraging states to adopt transparent procedures and equip their competent authorities with sufficient resources, and promoting binding arbitration to resolve disputes (OECD BEPS Action 14 Final Report, 2015). The OECD’s promotion of binding arbitration under the MAP procedure has not received widespread assent. As of October 2015, the OECD has identified only twenty countries as having agreed to the institution of binding arbitration under the MAP (OECD BEPS Action 14 Final Report, 2015). While the OECD has tackled the transfer pricing documentation and dispute resolution procedures separately, it is clear that the multilateral treaty would be especially relevant to these action plans. Converting an ad hoc and bilateral adoption of advanced transparency standards and mandatory arbitration mechanisms into a multilateral platform that would include all the major economies would transform the manner in which multinational operations are taxed in the globalised world.

In summary, the multilateral tax treaty faces several challenges. The task of making simultaneous changes to a wide swathe of bilateral tax treaties, many of which might be different from one another in their approaches to tax issues, is a massive technical challenge that would require considerable legislative dexterity. Not only is the multilateral treaty attempting to focus on a few core essentials of
BEPS actions that all states must sign on to, the treaty must, at the same time, also accommodate, to the extent possible, each state's special circumstances that might compel the state to seek special dispensation under the treaty. This is a question of balancing state sovereignty with multilateralism. This balancing act, which looks daunting enough when it comes to the technicalities mentioned above, becomes even more difficult when one realises that there is every possibility that substantive issues would make their way into the negotiations for the multilateral treaty, despite OECD's intention to the contrary. Not only would the negotiations over treaty language slide into substantial discussions on each country's responsibilities and obligations, it also remains to be seen whether the fundamental and growing rift between developing and developed countries over how to approach international tax abuse (in particular the appropriate standard for tackling transfer pricing issues) is settled or exacerbated by the multilateral treaty. Therefore, the multilateral tax treaty brings into sharp focus the challenges in extending multilateralism to a global tax order that continues to privilege the tax sovereignty of nations. Multilateralism in international commerce and the problem of tax sovereignty are discussed in greater detail below to suggest possible solutions to make the multilateral treaty feasible and attractive to both developed and developing countries, using potential strategies that India could adopt as an example of how developing countries might want to approach multilateral tax negotiations.

2. Multilateralism in international commerce

Multilateralism is the term used for a particular type of relationship between states, where the states agree to generalised principles of conduct based on a sense of mutual benefit accruing over the long term (Ruggie, 1992; Caporaso, 1992). It is important to multilateralism that the agreed standards of conduct be uniform, consistent and transparent. The standards should also be designed keeping in mind the varieties of contributions states can make to each other over a period of time, depending on
their levels of economic development and the individual resources and capabilities they bring to the table.

Multilateralism, as a feature of international relations, has a long and impressive pedigree. There are a number of multilateral treaties in such diverse areas as extradition, sea, environment, artefacts and trade. Countries negotiate and agree to multilateral obligations for a number of reasons. States enter into multilateral agreements when they believe that co-operation in a particular domain would garner more benefits than unilateral actions. The benefits of multilateral co-operation are especially promising in the long term rather than in an interaction over a short time period. Since it is likely that states will interact over a long period, co-operation can bring important benefits. Multilateral forums have another advantage in that, through negotiations and a collaborative process, states have the advantage of both discovering and convincing other states of their true interests or at any rate interests that are mutually beneficial to the contracting parties. A further advantage of multilateralism is that it makes it easier to monitor and implement internationally agreed obligations as quite often there is an international agency that is assigned the task of ensuring proper execution of the multilateral agreement and sometimes, as in the case of the World Trade Organization (WTO), there is a mandatory adjudicatory mechanism as well.

Multilateralism has been discussed extensively in the literature through game theory models, where, through collaboration rather than competition, states are able to further their individual interests. However, there might be situations where states need to collaborate not only to further their individual interests (which might be distinct from one another) but also their common interest. The idea of common interests has a particular sense of urgency in the OECD BEPS context because states have to ensure that multinational enterprises do not manipulate the international tax system to suit their individual purposes to minimise their global tax liabilities.
The fact that states have a common interest in tackling tax avoidance by multinationals but have so far been unable to collectively organise themselves against widespread multinational tax minimisation beyond the intention of tax legislation, is a phenomenon that needs explaining. Each of the affected states believes that it needs to, for reasons of fiscal stability, prevent base erosion and profits shifting (BEPS) but none of the states, it appears, believes that it should try to stop the tax minimisation that has led to BEPS. If states believed otherwise, they need not have waited for the G20, via the OECD, to come up with the BEPS initiative.

This paradoxical situation, where countries acknowledge the need to prevent revenue collapse as a collective problem but do not take collective initiatives to address the problem is a paradox that has its roots in the inherent instability in certain collective actions, where parties have interests in common but do not act as a team in addressing these common concerns, reflecting, in the final analysis, creeping individual interests that appear to overwhelm the common interest due, primarily, to lack of information. The Oxford philosopher John Gardner has addressed this issue by using the example of a number of people trying to save a child who is in a balloon that would fly away unless held down (Gardner, 2002).18

Each of the persons involved in the balloon incident would like to, and has sufficient (moral) reasons to, save the child. In this respect, they have an interest in common. However, their efforts to try to save the child are dependent on whether other people would do their part as well. If a person believes that the other is not going to try their bit to save the child, he would lose interest in saving the child as well since it would be a futile exercise. Unfortunately, other people would interpret this lack of interest as a cue to stop trying to save the child and this domino effect of indifference would result in the whole project collapsing into a failure to hold on to the balloon. The key takeaway in this story is the problem of converting people who have common interests into people who collectively work towards these common interests.
Gardner's response to the problem of instability in group actions is to emphasise the value of teamwork. In the case of teamwork, people who have interests in common with others not only have a reason to achieve their interests but have an additional reason to achieve those interests as members of a team. When people act in the furtherance of their additional reasons (to act as members of a team), they are no longer merely individuals pursuing interests that are identical; they have been transformed into a team with no lack of information across or within the team, which becomes a distinct entity that pursues the common interest. Teamwork in pursuing common interest tends to stabilise group behaviour in pursuit of common interests as the members of the group are aware that everyone has an additional reason to continue with the project, which is the reason why they are all part of a team.

It might be argued that the idea of team work among nations suggests a level of collaboration that would contradict their traditional focus on national self-interest. The pursuit of national self-interest might be viewed as denying the possibility of acting as a member of a team. If each member of the team is interested only in his or her welfare and not that of his or her team, how could there be a collaborative exercise in the form of a team? Such a problem is especially acute in international taxation where countries compete with one another to attract investment from multinationals because each country believes that its fiscal needs would be met better with foreign investment even if, in the meantime, its immediate tax revenues suffer a decline. Expecting countries to act as a team to address the problem of BEPS might arguably be considered as impractical. Hence, it might be argued that any project of multilateralism in international taxation is a not a workable proposition.

The key to challenging the above argument is to first show how teamwork, as Gardner makes clear, can be instrumental in complementary motivation. Countries might achieve their respective national ambitions in a more efficient manner if they work together as a team rather than take unilateral or
bilateral action. This issue will be explored further in section 4 with respect to the BEPS issue. Further, even if it is established that countries need to act as a team, how is a teamwork ethic established among entities that do not yet have this ethic? At the bare minimum, members must be made aware of the rational benefits of teamwork, and that teamwork can bring important restraints on the actions of individual members, given that they develop an attitude towards one another that takes into account their membership in the team.\(^{19}\)

Multilateral agreements can take a variety of forms. States can agree with one another to perform actions that are non-binding, thus resulting in what is called 'soft law'. On the other hand, states can formalise their obligations to one another through treaties and thus, create what is called 'hard law' (Guzman, 2005). Even here, there are degrees of hard law depending on the severity and formality of the adjudication monitoring and mechanism associated with the treaty. In the case of some treaties, the obligations imposed on the states would be regularly monitored through inspections and independent observers, and a violation would result in sanctions imposed by a formal dispute resolution mechanism. This kind of treaty compliance is towards the extreme end of the hard law spectrum.

Multilateralism in tax law, until recently, has confined itself to soft law. The two major legislative interventions, namely the model bilateral tax conventions developed by the OECD and the UN are meant to be incorporated by the nation states in their respective bilateral treaties but are not meant to be binding. Nevertheless, most bilateral treaties follow, in one form or the other, the broad template provided by these two model treaties, with the OECD Model Convention being the more popular inspiration. In fact, some scholars have asserted that the similarities in approaches in various bilateral treaties have led to the emergence of international customary law (Avi-Yonah, 2007), although this position is controversial (Qureshi, 2015). Apart from the OECD, the UN and the International Monetary Fund (IMF) have contributed to the development of international tax standards. The UN
has so far lacked the institutional capacity to address international tax problems through a multilateral instrument while it is beyond the mandate of the IMF to develop a WTO like mechanism to address international tax issues. The field of multilateral tax efforts has by default been occupied by the OECD which, via the directive of the G20 group of countries, has attempted to broaden the participation of countries required for a genuine multilateral approach.

The OECD model law treaty has a commentary attached to it with the expectation that, over a period of time, common standards of interpretation would emerge. Although the commentaries have accelerated the push towards common standards, their impact has been somewhat limited because of three developments. Many countries, particularly developing countries, have negotiated terms in their bilateral treaties that are different from the terms used in the OECD Model Convention. Further, some countries have included reservations to the commentaries on some of the terms in the OECD Model Convention, thus making it clear that they are not in favour of adopting the interpretation suggested in the commentaries. Finally, some countries have changed the meaning of terms through domestic legislative amendments, thus indirectly blunting the force of any commentary in the OECD suggesting a different approach. For example, India has amended retrospectively the definition of royalty under its income tax legislation such that the definition is capacious enough to include payments for packaged software, in contradistinction to the OECD commentary that treats such payments as business income.

In the light of the OECD's current efforts towards multilateralism in tax law, it would be useful to assess the scope and success of multilateralism in international trade. International trade has had a long history of multilateral relationships beginning with the GATT in 1947 with twenty-four member nations and developing into the WTO today with 161 members. While the Doha Round has become mired in differences among nation states in furthering international trade, nevertheless, there has been progress in reducing tariff rates across a wide range of products and services. The greatest
achievement of the international trade regime that has made it truly multilateral in character is its mandatory dispute resolution mechanism.

The WTO dispute resolution mechanism has been pivotal in developing an independent, rule-based and efficient dispute resolution mechanism, which has given decisions that have had an impact, sometimes adverse, on both developed and developing countries. While the dispute resolution mechanism has been lauded for its effectiveness, it has also been noted that, without more legislative reform, dispute resolution would not be able to pick up the WTO by its bootstraps and make it a successful multilateral agreement (Osakwe, 2015). This essay will revert to this point in the section that discusses the lessons of multilateralism for the OECD BEPS project.

3. Multilateralism and tax sovereignty

Traditionally, a crucial element in the sovereignty of nations has been their sovereignty over tax matters although this has excluded customs duties. In the area of customs duties, the world has moved towards an international regime of tariffs that has reduced customs duties for a wide variety of goods. However, when it comes to direct taxes, including corporate taxes, countries have been reluctant to enter into multilateral agreements. Part of the reason is historical; when the League of Nations first began work on ameliorating double taxation, it tended to favour bilateral tax treaties (Brooks, 2010). The trend towards bilateral approaches towards the amelioration of double taxation continues to this day.

Further, the dominant trends in international taxation so far are for micro-multilateralism, i.e., an agreement among a small group of states rather than macro-multilateralism, i.e., a WTO-like agreement. For example, the multilateral efforts in tax are confined to Nordic states, states in the
Caribbean, and so on. The EU has made limited multilateral progress in the case of cross-border taxation of interest and royalties. Macro-multilateralism in tax law has had rather limited success in discrete matters such as the exchange of tax information and administrative assistance, as highlighted before.

There are a number of reasons for the dominance of sovereignty debates in the domain of international taxation. An exercise of taxing powers continues to be associated with democratic legitimacy and accountability (Ring, 2008). It is considered undemocratic to subject a citizenry to taxation determined by an international body that has not been democratically elected. Further, countries consider their direct tax policies to be an integral part of their fiscal policy and are reluctant to lose control over it. Fiscal policy is concerned not only with the generation of revenue but also with other state objectives such as the regulation of the economy, the fulfilment of welfare and environmental objectives, the amelioration of poverty and others, which together appear to comprise the sovereignty of the state. Therefore, any restriction on a state's autonomy in choosing the manner in which it taxes (or does not tax) its residents or how it spends its resources would be viewed to have an impact on a state's autonomy in governing a country. Usually, it is only the outcome of the tax-expenditure combine, or the fiscal deficit, that is accepted as a matter of multilateral interest or concern.

However, it must be recognised that sovereignty may become a convenient cloak for some powerful non-state associations to support the continuation of practices verging on harmful tax competition. The last feature of the sovereignty debates was in play when the OECD attempted to target tax havens. Both powerful NGOs in the United States such as the Centre for Freedom and Prosperity (CFP) and some American politicians (presumably lobbied by organisations acting on behalf of tax havens) characterised the move as an infringement of the sovereignty of nations and claimed that the tax policies of sovereign nations could not be determined by tax bureaucrats in Paris (Ring, 2008).
The impact of non-state actors challenges the idea of sovereignty at two levels. At one level, the presence of various multinationals with revenue higher than the GDP of some nation states attests to the power and influences of these large corporate groups. Many corporate groups, by shifting their formal residences and by transferring technology and property within the group, diminish the ability of states to control corporate behaviour unilaterally. In this scenario, it is somewhat futile to stick to old ideas of sovereignty. Arguably, these corporate groups may have already vitiated the tax sovereignty of nations and, therefore, the notion of states being allowed to exercise their sovereignty in the tax domain becomes outdated. Accordingly, states ought to be willing to bind their tax sovereignty to some extent through multilateral means in order to address the chipping away of fiscal sovereignty that they already face due to multinational corporate strategies.

At another level, multinationals are playing a role in influencing state tax policies. Tax scholars have made the point that the BEPS scenario is a result of successful lobbying by multinationals to maintain status quo with respect to applicable tax rules (Avi-Yonah, 2015). Even if this is true only to a limited extent, it raises doubts about the assertions of state sovereignty in tax matters. If state policy on taxes has been captured partially by multinational interests, only a multilateral effort might be able to counter such influences.

This is linked to constitutional and legal arguments, which can prove to be an impediment to greater global tax integration. Already, in the United States, there is a move to question whether the US revenue authorities have the power to act as expected under the BEPS initiative in CbC reporting. Similar concerns have been expressed regarding the impact of EU law on the ability of European nations to take part in any OECD multilateral project (Streinz, 2015).

4. Lessons for OECD Action Plan 15: An Indian perspective
We have thus far outlined the main features of multilateralism in international law and the problems involved in extending such multilateralism to the domain of international taxation. However, due to an unusual turn of events combining a global economic crisis with a greater willingness on the part of nations to collaboratively address the problem of tax avoidance, there is a real possibility of a ‘hard law’ agreement among nations through the medium of BEPS Action 15. This window of opportunity might close without much progress on the multilateral front unless both the developed and developing countries are clear about why and how they would benefit from such an agreement.

The OECD multilateral instrument has some advantages for both developed and developing countries. A binding multilateral instrument would help them resist better the demands of multinationals for maintaining the status quo as well as resist domestic political demands that are based on lobbying by multinational corporations. Further, since both developing and developed countries face a common problem of capital flight to tax havens, a multilateral instrument is the best medium to isolate such tax havens. One of the important consequences of a multilateral tax instrument is that it creates two sets of countries, one that has common rules of taxation including anti-abuse rules aimed at post box companies and another set that has not signed on to these uniform rules. If the first set of countries agree to substantially lower tax rates for corporations that are either resident or operating in such counties, this effectively reduces the incentive for corporations to be based in tax havens.\(^{32}\) Further, the common language in bilateral treaties as a result of the multilateral treaty would lead to uniform application of rules over the long term, and the resultant certainty could only benefit both tax administrators and taxpayers.

Despite these advantages, for developing countries, the OECD BEPS process, including BEPS Action Plan 15, has been a mixed bag. Commentators critical of the OECD BEPS initiative have identified a number of reasons for the dissatisfaction felt by developing countries with the BEPS process.
(Ryding, Global Alliance for Tax Justice, 2015). First, the known issues with the complicity of countries with tax avoidance plans, namely the patent box regimes and the secret ‘sweetheart tax deals’ between certain governments and multinational companies, have not been addressed by the OECD. Second, the single most important initiative of the BEPS process, namely the CbC reporting programme, has not been emphasised in the OECD final report to the extent desired by the developing countries. CbC reporting results in a responsibility to report mainly to the resident state of the multinational and it is feared that, despite information exchange commitments, host countries might find it difficult to obtain this information on the basis of which profit split among nations by the multinational would be calculated. There is no agreement on how to implement the profit split method in transfer pricing determinations, a method that is presumably preferred by developing countries. And, while the OECD continues to be keen on mandatory arbitration to resolve disputes under the MAP procedure, developing countries such as India are not too keen to accede to this procedure because they fear it would impede their revenue authorities from utilising domestic tax law to the desirable extent.

In light of the discussion above, the multilateral treaty plan under BEPS Action 15 may have receded in importance. The multilateral treaty has been envisaged by the OECD more as a site of implementation rather than negotiation. The treaty would implement the standards that have been negotiated in the previous fourteen plans. In addition, the treaty does not envisage affecting the domestic law of the respective signatories. In light of the limited progress on CbC and the use of the profit split method, it looks like the treaty's importance has been diluted further in the eyes of developing countries. In this view, not only is the multilateral treaty not perceived by the OECD as a tool for developing innovative tax techniques, but the limited changes proposed to be introduced through the multilateral tax treaty are of a nature not satisfactory enough for an important group of emerging nations.
Despite these developments, the multilateral tax treaty remains an opportunity for developing countries including India to forcefully introduce their viewpoints into the international tax debate, address some of the genuine concerns of multinationals and, at the same time, make sure that the BEPS debate move towards what the developing countries believe is a fairer apportionment of the taxable income of multinationals towards themselves. While it is true that Action 15 has been envisaged largely as a technical implementation of tax policies discussed elsewhere, there is no reason why countries like India cannot make use of the site for multilateral tax negotiations to introduce their perspectives in tackling tax avoidance.

India and other developing countries have been clamouring for a change to the transfer pricing rules. As mentioned before, India has not been satisfied with the arm’s length method and would like to move to a method approximating the formulary apportionment or the unitary method of transfer pricing. In part, the position canvassed against the arm’s length method is that it does not really work in practice, as it is difficult to find comparable parameters for pricing goods and services. The alternative to traditional arm’s length pricing discussed as part of the OECD BEPS Plans is the profit split method, which would apportion values among countries that would approximate the unitary method. Unfortunately, multinationals and most developed nations in which the multinationals are based, prefer not to move away from the traditional arm’s length method (based on comparable price analysis) and, therefore, there is no agreement yet on the modalities of applying the profit split method.

India, however, is not without additional leverage in this scenario. Curiously, it is India's distortionary tax structure that seems to set the conditions for its negotiating strength with multinationals. What is most problematic for multinationals working in India is not so much the substantive unfairness of Indian tax laws but the unfair manner in which tax laws are applied in India. This unfairness in the application of tax laws takes two forms. First, tax laws are applied even though, in some prominent
cases, the interpretation adopted by revenue authorities is widely perceived to be unreasonable. This can be seen most prominently in a transfer pricing case filed against Vodafone in India, in which the case was decided ultimately against the tax administration by an Indian court. The tax administration argued that transfer pricing rules would apply to a capital subscription. The administration’s position was a startlingly aggressive interpretive position and yet, it went to great lengths to argue in support of its assessment.\(^{34}\)

A bigger problem for multinationals is what happens when the Indian authorities find that their interpretation of the tax law is not favoured by the courts. In such cases, the authorities simply change the law, and change it retrospectively. This happened on a spectacular scale in the Vodafone capital gains case. Vodafone bought Hutchinson's mobile business but was mired in tax litigation because the transfer of Indian assets was effected through the sale of shares outside India, i.e., an indirect transfer. Vodafone claimed that, under Indian tax law (at the time of the transfer), it was entitled to a nil tax position on the share transfer in an external tax jurisdiction. The Indian Supreme Court agreed with Vodafone.\(^{35}\) The Indian government went ahead and changed the tax legislation to conform to their interpretation and made the change retrospectively so that it would apply to Vodafone as well. Not only was the amended legislation drafted in terms that were vague and overreaching, the fact that the legislation was retrospectively applied to Vodafone led to a fear among the multinationals that the Indian tax regime was not being applied fairly.\(^{36}\) These fears continue today because new examples of tax arbitrariness continue to surface with disturbing regularity.\(^{37}\)

In the volatility of tax administration that India finds itself lies the foundation for the need for collaborative negotiation of acceptable tax rules with developed countries and the multinationals that are resident in them. India should negotiate on the basis of precise and clear rules applied fairly and reasonably, and expressly commit to refraining from retrospective legislation. It can then leverage its willingness to strengthen its legal mechanisms and discuss alternate transfer pricing rules. From the
perspective of multinational companies, presumably it is preferable to be subject to certain and clear rules applied reasonably as compared to transfer pricing rules applied on a basis approximating the formulary apportionment method.

For India, making promises towards a tax regime based on certainty satisfies domestic demands as well. The Income Tax Act, 1961, is widely considered as unwieldy, archaic and anachronistic in a globalised economy. Over the past decade, various Indian administrations have tried to reform Indian tax law and, until 2014, there was a possibility that a much improved version of the current tax legislation, called the Direct Taxes Code (DTC), would be enacted. However, a new Indian government in 2015 declared that India will not adopt this code.\textsuperscript{38} India, if it has to have any leverage with developed countries, must revive this code or a revised version of this code that is precise and simple to understand with complementary subordinate legislation or rules that would reduce, to the extent possible, a multiplicity of interpretations. Of course, no legislation can rule out disputes between a government and foreign investor. But an efficient, and just resolution process of tax disputes is an equally essential element; this is currently lacking – an issue that will be discussed below.

In addition to making tax legislation more coherent and certain, the Indian government has also been attempting to introduce General Anti-Avoidance Rules (GAAR) since 2012. The implementation of GAAR has been postponed twice, and its introduction is expected from 2017 unless the Indian government defers it further. India must take a firm negotiating position that, unless there is progress on the disputed issues on the transfer pricing front, it would introduce GAAR from 2017. Nevertheless, it must be admitted that the GAAR regime introduces rules that are a case-by-case application of extremely general rules of tax avoidance to commercial transactions. Multinational companies would be very reluctant to subject themselves to such a regime, in particular because there remains a legitimate fear that, just as in the case of transfer pricing, the application of GAAR may be
arbitrary and revenue motivated, in particular, by a tax administration that is not well known in international circles as sufficiently trained, motivated, rule-based or incorruptible.

As mentioned earlier, in addition to certainty, multinationals are concerned about efficient dispute resolution. While Indian courts have resolved several disputes in favour of multinationals, the judicial process is cumbersome and takes several years to come to a conclusion, resulting in high cost to the tax payer. India has taken a strong position against any alternate dispute resolution mechanisms that would take away the jurisdiction of its courts.39 This is a mistake. India would benefit from agreeing to binding arbitration under the MAP in its treaties. Agreeing to international arbitration would enable India to make the arbitration procedure more transparent and fair, and address some of the biases that the developing countries might believe are hardwired against them. Moreover, the fear of sovereignty being superseded is really a fear that ought to have no place in the globalised legal world. India has already ceded the jurisdiction of its courts under international instruments relating to international trade, bilateral investment and commercial arbitration. Moreover, since a more efficient dispute resolution procedure has been addressed specifically in the OECD BEPS process, India would send an important symbolic message that it is serious about a give and take approach in international tax negotiations.

Conclusion

Any workable international regime on tax law must be concerned with managing information on global tax payers, making policy choices that are agreed upon widely in the international arena and implementing efficiently the agreed global norms in each of the member country's tax regimes. It is rare for all three conditions to come together at the same time. The OECD has managed to obtain that broad consensus under the auspices of the G20 countries, towards a workable global order in international taxation.
Even before the OECD BEPS process, the OECD had obtained the consent of a large number of countries for a more expanded exchange of information process, which is crucial to unearthing egregious cases of tax minimisation, if not evasion, and is a major improvement over the current exchange of information arrangements. The OECD followed on by working on a set of policy choices to tax base erosion by multinationals through its BEPS initiative. The last BEPS action is concerned with the implementation of these policy choices through a multilateral treaty that would simultaneously amend a number of bilateral treaties, and has been the focus of this essay. It is expected that states would be more willing to accept changes to their bilateral treaties if they could be assured that others are doing it as well. To this end, the OECD has progressively developed a set of action plans that would result in a fledgling international order and cover the informational, policy and implementation vectors within an integrated multilateral framework.

Despite these impressive steps, some major challenges remain which, if not met with bold initiatives, have the potential to undo the work accomplished so far in developing an international consensus in tax policy application. The multilateral tax treaty envisaged in BEPS Action 15 envisages an arrangement among nations that would apply the OECD initiatives in a uniform manner. On the face of it, the challenges to the proposed multilateral framework are technical. The multilateral instrument would contain an agreement on core issues relating to profit shifting and base erosion, and the mutually agreed rules on issues such as hybrid entities, treaty abuse and permanent establishments would then cascade into bilateral treaties through amendments made under the aegis of the multilateral instrument rather than through bilateral negotiations (BEPS Action 15 Final Report). The member states would be free to introduce reservations in the multilateral instrument with regard to the matters on which they have taken a different position.
Beyond the technical, there are three points of contention that could derail the delicate negotiations on the multilateral treaty. First, there continues to be a strong opinion among developing countries that the arm’s length transfer pricing method adopted under the OECD BEPS plans are not going to prevent base erosion and profit shifting. In addition, the CbC reporting rules do not appear to have the kind of wide impact as initially envisaged. It appears now that it would be difficult for developing countries to obtain comprehensive financial information from the home jurisdictions of multinationals on their international commercial operations (Ryding, Global Alliance for Tax Justice, 2015). To this extent, the multilateral treaty cannot reflect on the primary concerns of the developing countries. Second, the OECD would like the multilateral treaty to include binding arbitration under the MAP procedure. While a more efficient dispute resolution system would be welcomed by developed countries, developing countries such as India are wary of it. Third, there is no provision in the multilateral treaty on creating a permanent institutional framework that would be able to amend bilateral treaties in the future and would continue to develop appropriate policy responses to combat global tax avoidance. The stakes are high: if the multilateral treaty fails to gather momentum or provides only for a limited intervention in current international tax law, a historical opportunity to reshape global tax rules would have been lost.

Faced with the prospects and challenges emanating from BEPS Action 15, a developing country like India has a few hard choices to make. Must it accept the current proposals as a fait accompli that would marginally improve the tax avoidance challenge that India continues to face but would not result in a radically different world tax order, or should it embark on further negotiations within the broad parameters of the multilateral agreement based on the leverages that it perceives the developed countries and multinationals would respond to? To choose the latter would be to heighten the importance of the multilateral negotiations beyond that envisaged in the OECD so far and, at the same time, to assume a leading intellectual role that India has so far been reluctant to adopt.
This essay attempted to argue that developing countries, including India, must make more of an effort to use the multilateral treaty negotiations to advance their perspective in return for some concrete measures to improve investor confidence in their tax systems. The multilateral initiative has been in the background of the OECD BEPS initiative, and it is up to India and nations that share India's concerns to seize the moment and try to catalyse further possible change. Despite the relatively low attention garnered by it, the multilateral agreement is key to the success of the OECD BEPS initiative. Relying on each of the states to enter into bilateral treaties in order to effectuate the BEPS changes would take too much time and effort. Both developed and developing countries would like a more efficient response to international tax avoidance. India must utilise this opportunity of shared interests to actively seek a change to the current multilateral efforts in international taxation.

This essay has argued that, in pursuing its interests, India must engage in a collaborative rather than a competitive path. The paper has relied on extant work on ‘teamwork’ to demonstrate the need for countries to work together rather than at cross purposes with one another in challenging international tax avoidance.\(^{40}\) India must, in a timely fashion, put forward its proposals for tax simplification, for legislating clear and precise rules, and show its willingness to adopt a speedy and independent dispute resolution mechanism under the MAP procedure, along with a commitment to avoid making retrospective changes to its laws. Most of these suggested changes to its current tax regime are measures that India has been under pressure to make from its domestic industry as well and, therefore, it is unlikely that the bogey of sovereignty would be raised in this respect. Even binding arbitration under the MAP is unlikely to be controversial given that India agreed to binding dispute resolution mechanisms under other multilateral and bilateral instruments.

In return for these measures, India must pursue actively the possibility of applying the profit split method as a precursor to exploring alternatives to the arm’s length method for transfer pricing determination. India must also argue for binding multilateral obligations on developed countries to
share their data obtained from CbC reporting. Finally, India must argue for a permanent institutional mechanism set up under the multilateral treaty that would ensure timely amendments of bilateral treaties immediately following detailed and comprehensive discussions. Such an institutional mechanism would have to account for appropriate and equitable representation from both developed and developing countries and would also be tasked with the responsibility of developing future policy choices in the face of new kinds of international tax avoidance. It is up to India and other developing countries to channel any disappointment with the OECD BEPS initiative into a more concerted effort to make multilateralism the fulcrum rather than an afterthought to the OECD initiative in tackling tax avoidance.

Endnotes

1 Nigam Nuggehalli, Azim Premji University, Bangalore. I thank Anasuya Syam for her research assistance and thoughtful comments on this essay. I am grateful to Dr. Parthasarathy Shome for his helpful comments. Needless to say, any errors or omissions remain mine.
2 The History of the Peloponnesian War was narrated by Thucydides (Benjamin Jowett, 1883).
3 In one of the most powerful statements of power in international relations, The Athenians told the Melians: ‘…for we both alike know that into the discussion of human affairs the question of justice only enters where the pressure of necessity is equal, and that the powerful exact what they can, and the weak grant what they must.’ (Benjamin Jowett, 1883).
4 Detailed information and explanatory papers are available at www.oecd.org/ctp/beps.htm
7 The countries are Albania, Azerbaijan, Bangladesh, Croatia, Georgia, Jamaica, Kenya, Morocco, Nigeria, Peru, Philippines, Senegal, Tunisia, and Viet Nam. These countries were involved directly in the work done under the aegis of the OECD Committee on Fiscal Affairs. For more information, see http://www.oecd.org/tax/developing-countries-and-beps.htm
8 Controlled Foreign Corporations (CFCs) are companies incorporated in low tax jurisdictions that usually earn passive income such as royalties. Such companies are owned by shareholders resident in high tax jurisdictions and are used by these shareholders to escape taxation in their resident jurisdictions on income earned through the CFCs.
9 The Convention on Mutual Administrative Assistance in Tax Matters was developed in 1998 but received a major boost in membership only after the 2008 financial crisis. The text is available at http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceinxmatters.htm
10 The Global Forum is envisaged as a body (consisting, at present, of 127 members) that would collectively encourage an efficient implementation of the exchange of tax related information among countries.
11 See Avi-Yonah & Savir, 2014, for a discussion of the British Virgin Islands (BVI) legal system that enables companies to operate without substantial financial records.
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http://www.nishithdesai.com/information/research 
http://www.oecd.org/ctp/transfer 
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http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm 
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18This fictional incident is central to the plot of Ian McEvan’s novel Enduring Love. 
17See Caporaso, 1992, p 616 for a discussion of how policy makers ‘try to convince each other that their respective models of the world and even their respective preferences are mistaken’. 
16See Powell, 2003 for a discussion of the long-term benefits of multilateralism. 
15See generally, Blum, 2008, for a discussion of the impact and operation of multilateral treaties in international law. See also, Rixen and Rohlfing, 2005 on the political economy of multilateralism.

The discussion above must not be taken to mean that the debate on multilateralism has only utilitarian justifications. The smaller counties of the world look to multilateral agreements to safeguard their interests and seek a fair and just bargain for their economic ambitions. It has even been said that multilateralism is an expression of the sovereign equality of nations. However, when a small group of wealthy nations agree to common terms, the ideas of equality of nations and democratisation of international law play a lesser role even though the agreement is multilateral in character. For a long time, the OECD’s work in tax law, although multilateral in nature, was accused of being a rich men’s club. Perhaps in response to this accusation, the proposed multilateral treaty on BEPS seeks to be more inclusive, inviting the G 20 nations to participate actively in the negotiations.

See Wouters and Meuwissen, 2011.

For example, India has reserved the right to include in the definition of royalties, payments for the use of, or the right to use, industrial, commercial or scientific equipment under Article 12 of the Model Convention. Similarly, Greece considers payments related to downloading of computer software as royalties even if those products are acquired for the personal or business use of the purchaser, thus, detracting from the commentary under Article 12. For more information on reservations made by different states see http://www.oecd.org/tax/treaties/2014-update-model-tax-convention.pdf 

23See para 14.1 of the OECD Commentary on Article 12(2), 2010

24The membership information is current as of April 26, 2015. For more information on membership, see the ‘About WTO’ tab of www.wto.org.

25See for example, the adverse WTO ruling against U.S. Foreign Sales Corporation, explained in more detail in Ring, 2008.

26See for example, the adverse WTO ruling against the local content requirements in the Indian solar power programme, explained in more detail in Kanth et al, 2015.

27For another critical response to the WTO after the failure of the Doha round of negotiations, see Alessandrinia, 2013.


29See the EU royalty and interest directive at http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm

30See Ring, 2008, pp.168-179 on the correlation between a state’s tax sovereignty and control over fiscal policy.

31Senate Finance Committee Chairman Orrin Hatch and House Ways & Means Committee Chairman Paul Ryan wrote a letter to Treasury Secretary Jack Lew stating, among other points regarding BEPS, that ‘Some recent press reports have indicated that the Treasury Department believes it currently has the authority under the Internal Revenue Code to require CbC reporting by certain U.S. companies and that Internal Revenue Service (IRS) guidance on this reporting will be released later this year. We believe the authority to request, collect, and share this information with foreign governments is questionable.’ For the full text, see ‘Hatch, Ryan Call on Treasury to Engage Congress on OECD International Tax Project’ available at http://www.finance.senate.gov/newsroom/chairman/release/?id=ff0b1d06-c227-44be-8d5a-59998771188b.

32See Reinhold, 2004, p.698 for a similar analysis with reference to a proposed multilateral tax treaty pertaining to e-commerce transactions. It would be interesting to see what would happen to bilateral treaties that countries have with some tax havens. For example, India has a tax treaty with Mauritius that provides benefits for companies that might not have a substantial presence in Mauritius. If Mauritius is not one of the signatories to the OECD multilateral treaty, companies can still continue to make use of the Mauritius route unless India changes its domestic law.


36For an analysis of the post-Vodafone amendments, see my article, ‘The Vodafone amendment is more than a retrospective issue’, http://www.business-standard.com/article/opinion/n-s-nigam-the-vodafone-amendment-is-more-than-a-retrospective-issue-1140727101195_1.html

37The more recent controversy related to the retrospective application of the Minimum Alternate Tax (MAT) rules to overseas portfolio investors in India. See, for an analysis, http://www.businesstoday.in/money/tax/fiis-get-relief-from-retrospective-mat-arun-jaitley/story/223327.html

References


