

New tax treaty will close loopholes that allow multinationals to avoid tax

Written by The Conversation

Australia, with another 70 countries, has signed a multilateral treaty to create more coherence in fighting tax avoidance by large multinational corporations. The [Multilateral Convention to Implement Treaty Measures to Prevent Base Erosion and Profit Shifting](#), or BEPS Convention, aims to close loopholes in the international tax system that result from differences in individual country tax systems.

Countries are fiercely protective of their own tax sovereignty and claim the right to set their own company tax rate and base. But this can result in lower company tax around the globe, as multinational enterprises can move capital investment to lower tax jurisdictions and take advantage of tax havens to reduce their global tax bill. This latest treaty will help to overcome this problem.

Since the global financial crisis, nearly a decade ago, the [G20 countries](#) have tried to reform international tax with a [Base Erosion and Profit Shifting](#) (BEPS) project. Australia has been a [strong supporter](#) of the BEPS project since it started, including as chair of the G20 in 2014.

This project resulted in [15 actions](#) that were endorsed by the G20 in 2015. The signing of this tax treaty implements action number 15 to amend existing tax treaties to limit international tax planning.

The other BEPS actions aim to strengthen enforcement, remove inconsistencies in national tax rules, enforce disclosure of corporate tax profits in havens and encourage sharing of tax information between country revenue agencies.

Australia can't go it alone on international tax

International tax cooperation remains critical and this BEPS Convention enables an anti-abuse framework to be embedded in Australia's treaty network.

New tax treaty will close loopholes that allow multinationals to avoid tax

Written by The Conversation

In the last century, countries around the world have negotiated bilateral tax treaties, producing a network of thousands of treaties. [Australia](#) alone has about 45 bilateral income tax treaties.

The main goal of bilateral tax treaties has been to prevent double taxation of international business where it operates in more than one country. But the terms of tax treaties can also be used to minimise tax. For example, a company may have significant business sales in a country - like Google in Australia - but under a treaty rule, it may not be treated as having a business presence there.

How does the BEPS Convention amend tax treaties?

Without this multilateral convention, it could take decades for countries to renegotiate these bilateral tax treaties. Where countries sign up, the new rules will take effect as soon as each country has ratified the convention.

The BEPS Convention is the first ever multilateral tax treaty that modifies substantive tax rules. Even the speed of signing the BEPS Convention is unprecedented: from treaty mandate to signature has been only 18 months. Most multilateral treaties take much longer, such as the Trans-Pacific Partnership, which has been in negotiation for more than nine years (and may not ever be agreed).

A leading British tax lawyer observed that the BEPS Convention is ["not tax peace in our time"](#). But it is still significant.

The convention inserts a new anti-abuse rule which states that tax treaties are not to be used to abuse national tax laws, if a taxpayer uses a treaty rule for the principal purpose of reducing its tax liability in a country. The convention will also make changes to prevent mismatches in treaty tax rules and to end the artificial avoidance of a business tax presence in a country, for example by using a separate company to do its operations under a contract.

To push governments to resolve tax disputes, the convention inserts an arbitration clause into treaties. If two countries cannot resolve a treaty dispute, then after two years (and if no court case is on foot), it will go automatically to an independent arbitrator who can make a decision

New tax treaty will close loopholes that allow multinationals to avoid tax

Written by The Conversation

that binds the governments and taxpayer. Its controversial and many countries may not agree to arbitration but Australia has signed up to it.

Australia has [adopted most of the BEPS Convention measures](#) , as being consistent with its current tax treaty policy. But many countries, including Australia, will need to enact domestic legislation to bring the convention into law.

Once countries sign up, the treaty changes will take place immediately - this could amend as many as 30 of Australia's treaties.

The future international tax architecture - but without the US?

The BEPS Convention was signed by more than 70 countries. This includes leading signatories such as China, Germany (the current G20 Chair), the United Kingdom, France and Japan and also several low tax financial centres like Singapore and Ireland. But the United States did not sign.

The US failure to sign is hardly surprising. It comes one week after President Trump [withdrew](#) the US from the Paris Climate Agreement. It's another example of the US retreating from multilateral cooperation on issues affecting all nations.

The US also did not sign the [Tax Administrative Convention](#) , now with 111 country members, which provides the legal basis for the [country by country](#) exchanges of information about global profits for billion dollar companies, including with the [Australian Tax Office](#) . Instead the US insisted on "going it alone" with its Foreign Account Tax Compliance Act, or [FATCA regime](#) , which demands foreign countries provide data on US citizens.

Many US tax treaty provisions are in line with the BEPS Convention. But surely that misses the point of multilateralism in tax or any other field of global concern. Instead, we see China is taking a leading role in multilateralism. It is unclear what the US stance will mean for international tax in the longer term. However, this treaty will give some help to other countries

New tax treaty will close loopholes that allow multinationals to avoid tax

Written by The Conversation

aiming to tax global profits of US multinationals, including Google, Apple and Uber, while those companies lobby for the US to [reform its own company tax laws](#) .

The pace of international tax change is usually glacial and most country co-operative efforts go nowhere. The BEPS Convention provides, for the first time, an international legal architecture for future multilateral tax reform.

Miranda Stewart receives funding from the Australian Research Council.

Read more <http://theconversation.com/new-tax-treaty-will-close-loopholes-that-allow-multinationals-to-avoid-tax-78595>