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BEPS Multilateral Convention Ratification for the Russian Tax System

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Abstract

Purpose *– As the aim of the current research is a scientific understanding of the MLI BEPS provisions and their influence on the domestic tax system in order to avoid their ambiguous perception and practical application.*

Design/Methodology/Approach *– This paper analyzes of the consequences of the erosion of the tax base, the anti-evasive tools and strategies proposed in the implementation MLI BEPS. The general scientific dialectic approach helps to set the patterns and interconnection of the causes of the international tax instrument BEPS and the consequences of its ratification by the Russian Federation.*

Findings *– Due to a vague tax system the income loss of the different countries, including Russia, gives a possibility to the unscrupulous companies to evade taxes. In practice the significant practical problems arise in connection with expanding the arsenal of protective measures for DTAA in states ratifying MLI BEPS.*

Originality/Value *– Since October, 1 2019, the Multilateral Convention's provisions have come into effect for the Russian Federation. Despite the fact that the Multilateral Convention is related to the documents of the soft force its implementation will become to be a base to correct the country's legislation on the issue of the prospects for its economic development and also to withdraw the multinational corporations from low-tax jurisdiction and to terminate their usage of benefits and advantages.*

Keywords *taxation; OECD; erosion of the tax base and increase in profits; BEPS Multilateral tax convention.*

I. Introduction

In recent years the international tax landscape had sharply changed as a result of economic problems in connection with which new standards were developed that allowed the countries to protect their tax bases (Altshuler, 2014). According to the most positive estimates, the annual loss of income is from 100 to 240 billion US dollars because of Base Erosion and Profit Shifting (further – BEPS) that causes financial damage to many states around the world (Austry *et al*., 2016).

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The problem of the counteraction to BEPS is not new. Some states had adopted the laws against double taxation since 20s of the last century. The problem has been discussed for more than 20 years on the international level (Danone and Salome, 2017).

Modern transnational corporations use actively the loopholes in international tax treaties to erode the tax base and to move profits, developing the strategies of tax planning. Corporate business profits are claimed in jurisdictions where the corresponding tax rates are minimal. For example, in 2017 US Corporation Google avoided the payment of 22.7 billion US dollars transferring profit to subsidiary Google Ireland Holdings that was registered on Bermuda. By the end of 2017 financial year, the company Apple accumulated in various holdings, located all around the world, 252 billion dollars avoiding tax deductions to the US budget.

The widely spread BEPS problem presents in the Russian Federation as well. After reaching ten-year low in 2018, increase of foreign direct investment in the country's economy can be seen in 2019 (Bank of Russia, 2019). But their structure remains the same: the major cash flow injections come from Hong Kong, Cyprus, the Netherlands, and some offshore microstates of Western Europe (Bershidsky, 2019).

The problem of BEPS counteractions has global nature and that is why careful work at the legislative and enforcement level is needed to minimize the consequences and to improve the investment climate of Russia.

In the framework of the current research there is analysis of the following strategies, instruments and mechanisms of the counteractions proposed for the implementation of MLI BEPS:

- Principal purpose test (Action 6., further - PPT)
- Simplified Limitation of benefits (further - LOB)
- Permanent establishment (Action 7., further - PE)
- Tax Treaty Arbitration.

The main advantage of the Multilateral convention can be expressed by the formula "one negotiation, one signing, one ratification" that was formulated by OECD in Legal note on the operation of MLI in accordance with public international law (OECD, 2015).

II. Literature Review

Tax revenues are one of the main types of financing of the state and it seeks to receive all payments in full as well as minimize offenses in this area. "Online mechanisms allow modern Russian companies to develop electronic document turnover and electronic tax accounting and will stimulate automatization of the system of tax administration, which is a positive tendency" (Vandina Mkrtychan, Denisov, and Vechkinzova, 2018). Nevertheless, despite all the efforts of state fiscal services, there are legislative loopholes for tax evasion. "The shadow economy problem has existed since the period of permanent spread of markets and fiscal system consolidation as the basis for state budget formation to strengthen the state's defensive and social functions" (Osipov *et al*., 2018). Since tax differences in

different jurisdictions allow to create tax evasion schemes then it is not possible to solve all the problems of taxation by the efforts of only one state. "…some companies of the sector have hidden income, pay salaries "in envelopes" and spend some money for resolving problems with state institution" (Luzgina, 2017). In this case only the international legal regulation can eliminate the existing problem. For a long time, the problems of double taxation and tax evasion had been solved at the transnational level through bilateral agreements between separate countries.

New money forms also require close attention of tax and law enforcement agencies since they often serve as the means of "illegal enrichment or proceeds of crime" (Šimonová Čentéš, and Beleš, 2019).

The scientific literature has long drawn attention to the special role of the Organization for Economic Cooperation and Development (OECD) in the process of setting up a system of interstate relations in the tax sphere (Christians, 2009). The OECD Report on Harmful Tax Competition (1998) developed the basis for addressing the issue of nominal tax jurisdictions (the so-called "tax havens") and harmful preferential tax regimes influencing upon tax base of other countries and distorting patterns of trade and investment. The regulatory mechanism for counteracting the erosion of the tax base assumed measures of influence on the behavior model of transnational organizations. After 20 years, in September 2013, the OECD published an ambitious and comprehensive plan to combat the erosion of the tax base and the withdrawal of profits that was supported by G20 leaders. BEPS Plan provides for 15 actions and, as part of the last one, The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (further – MLI BEPS) prevention was adopted on November 24, 2016.

The necessity of MLI BEPS development, as an international tax instrument of soft force, is determined by the fact that achieving uniformity in tax treaties between states is a cumbersome process and needs the corrections in more than 3 thousand documents. That is why Multilateral Convention does not make direct changes to agreements concluded between states but acts in parallel with them, "modifying" them and bringing them into line with the BEPS Plan (OECD, 2016a). Temporary conflicts between agreements and the Multilateral Convention are resolved in accordance with the principle set forth in paragraph 3 of Art. 30 of the Vienna Convention on the Law of Treaties: "A later law repeals an earlier one" (United Nation, 1987).

In June 2017, in Paris, the representatives of 67 states signed Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (further – Multilateral Convention) in order to prevent tax evasion in international relations. In scientific sources, it is often referred to as Multilateral Instrument (MLI) (OECD, 2016a).

Even in the early stages of consideration of the concept MLI BEPS the experts predicted that it would be negatively perceived by countries with "high level of national sovereignty", including Russia. This hypothesis turned out to be false: The Russian Federation signed this document on July 7, 2017 and on May 1, 2019 the Federal Law N 79-FZ about its ratification was signed (Federal Law N 79-FZ, 2019).

An updated list of parties of the Multilateral Convention, consisting of 92 countries, was published on November 26, 2019 (OECD, 2020). According to the OECD, the changes will affect more than 1,100 bilateral agreements.

III. Methodology

There were used such methods as analysis and synthesis, induction and deduction, detailing and summarizing the information presented in the works of domestic and foreign experts. The research was based on the principles of the system approach with usage of the comparative and system-structural analysis methods of socio-economic processes. There were used the methods of system analysis of the regulatory features of anti-evasive strategies and tools at the international level and the comparison of international and domestic mechanisms of BEPS counteraction. The complex research was done and it summarized the latest innovations and ideas in Russian international tax policy that was developed as part of international tax projects implemented on the basis of the OECD.

IV. Results and Discussion

4.1 Difficulties in interpreting the terms used by the OECD in the Principle Purpose Test (PPT)

Principle Purpose Test as well as Simplified Limitation of Benefits was developed in the framework of Action 6 in Plan BEPS and they were included into the minimal standard for the countries with MLI BEPS ratification. OECD proposes several ***variants of the usage of the Double Taxation Avoidance Agreement*** (DTAA): (1) rules of PPT and LOB at the same time or (2) only PPT, or (3) LOB rule supplemented by special provisions for opposing schemes with conduit companies. As known, during MLI BEPS ratification the Russian Federation extended these rules to 71 DTAA out of 82 functioning. Besides it, Russia chose the most comprehensive option for implementing the Convention including not only the “minimum requirements” but also other provisions with the most stringent option to DTAA limit benefits.

The issue of PPT applicability has sparked a heated debate in the legal science and professional environment. The experts note that it lacks a test of an “economic being”. Besides it, the question of the applicability of the terminology of previously developed testing rules arises for the purposes of international treaties in science and practice.

The rule of interpreting the indefinite terms in DTAA lies in the fact that they are relevant in accordance with the domestic law of a state implementing PPT if the context does not require otherwise. In this connection there is a question about the universality of terminology used in the OECD. The usage of the international meaning is allowed in DTAA in many countries in accordance with the general perception of the definite term. Usually this general perception is written in the comments of OECD but it also can be found in the final reports to BEPS Action or legal clarifications.

Main methodological tool that OECD proposes to use by the countries for Multilateral Convention ratification is Explanatory statement to MLI BEPS (OECD, 2016b). This document reflects the quintessence of a “common understanding" of the terminology of anti-evasive instruments and the

implementation mechanism of MLI BEPS in general. It is necessary to think whether the OECD Explanatory Statement has every right to set a benchmark for this “common understanding" before beginning the determination of the Principle Purpose rule, developed on the international level. There are several reasons why this can be problematic.

Firstly, BEPS explanations, although legitimate, are not generally accepted. The international studies argue that although the G20 and OECD countries are politically connected by decisions of their international organizations, defining the agenda for the BEPS project, and harmonization of wording of new OECD Comments. But the situation is not the same for many countries that have signed MLI and that are not the members of any of the two organizations developed the BEPS project (Valderrama and Johanna, 2015). Other scientists express caution against a small number of countries that seem to control tightly decision making, assuming that such a new international tax order, where the terminology is controlled by a certain group of countries in the OECD and G20, cannot be easily reconciled with the common understanding holding by others outside this specific group.

The second reason to be cautious is that the explanatory statements submitted by the OECD are apparent new. K. Vogel suggested that the statements in the new OECD comments could receive the status of “international taxation language” only when “enough time would pass so that the amendment would leak into the minds of international tax experts who were not members of Working Group No. 1.” (Vogel, 2000). He suggested that it might need up to 10 years before the clarified term would take on “special meaning” as it was stated in paragraph 4 of the Vienna Convention on the Law of International Negotiations (Raad, 2008). Due to these reasons the author suggests that OECD clarifications can acquire “special meaning” only in the relationship “between OECD countries”.

The third problem is the possibility of different interpretations of the OECD Explanatory Statements on the use of PPT in separate states that have made MLI BEPS ratification. Countries that have internal common rules or legal concepts to combat tax abuse will be more familiar with the approach adopted by OECD relating PPT. However, it does not suggest that all jurisdictions will have harmonized concepts for the application of legal norms in litigation (even if the court is a substantive tribunal) or even similar procedures for proving.

As the result of these problems it is too early to conclude that the guidance, included in the explanatory statement MLI BEPS, will get the high status as a source of “common understanding” especially for the countries that are not OECD members. As K. Vogel suggested, the process would take much longer period and even then would be less consistent than it could be imagined. It is possible that tax practice in different jurisdictions will converge but it is equally possible that the stand-alone meanings will not be easily set for various terms in PPT.

This article attempts to analyze PPT from a normative perspective and thus the starting point is the analysis of what we have and recognizing that the concept of “common understanding" is somewhat idealistic in applying PPT and cannot be universal for all the states that implement it in their tax systems.

Among the terms used in the article 7 MLI BEPS, only the Covered tax agreements (further - CTA) is disclosed. The paragraph 2, article 2 of MLI BEPS contains a reservation that any vague term

("unless the context requires otherwise") should be interpreted in accordance with applicable DTAA. However, applying PPT the international concept is important but not the one that is used by national legislation.

Principle Purpose Test elements

The structurally-substantive basis of PPT in its "common sense" consists of three main elements:

Content element: Tax benefits include tax deduction, exemption, deferral or refund.

Subjective element: tax administrations must make a reasonable conclusion, considering all relevant facts and circumstances that getting a benefit has been one of the main aims of any agreement or transaction that leads directly or indirectly to this benefit.

Objective element: the taxpayer must establish that the provision of such benefits will be consistent with the object and purpose of the provisions of the contract in these circumstances.

In the Russian Federation the term "Principle Purpose" began to be used at the legislative level since 2017. In paragraph 2 of Article. 54.1 of the Tax Code of the Russian Federation, the taxpayer is granted the right to reduce the tax base in the case if the aim of the main purpose of the transaction (operation) is not non-payment (incomplete payment) and (or) offset (refund) of the tax amount. In this case, we can state that the lack of an expanded interpretation of the concept of the principle purpose allows to apply the provisions formulated at the international level at the level of domestic law. This example demonstrates the "modifying" effect of OECD Recommendations in relation to tax systems of states that have implemented MLI BEPS provisions.

The PPT concept has similarities with the "business purpose principle" used in Russian tax litigation practice. The last one is also successive: it began to be applied in US law and was formulated by the US Supreme Court in a tax case Gregory Helvering (1934) (Sutherland and Supreme Court…, 1934). During this case United Mortgage Company shares were sold after its reorganization in order to use the benefits connected with its reorganization and understating income tax. US Supreme Court found that the reorganization of United Mortgage Company was a disguise to conceal its real purpose - understating the tax base and demanded to recover income tax from the owner of shares Evelyn Gregory.

In Russia the principle of the business purpose got the development after reflecting the legislative position on the issue of getting unreasonable tax benefits in Resolution of the Superior Court of Arbitration Plenum No. 53 on October 12, 2006. Paragraph 9 of the mentioned Resolution emphasizes that tax benefit cannot be considered as an independent business purpose.

Despite the fact that there are conceptual similarities in the rules of the "principle purpose test", used in the international acts on BEPS counteraction, and the principle of the business purpose, used in the domestic judicial practice, there are also some definite differences in the given theories that can influence

upon a tax dispute resolution. For these reasons, we consider the arguments of researchers who identify these concepts to be untenable.

Comparing these rules, we can summarize the following. In accordance with the PPT concept, in the case of the refusal of the tax benefits, it must be proved that the purpose principle of a transaction is in the reduction of a tax base. In its turn to use the concept of the business purpose is enough to prove that the purpose of the transaction, consisting in obtaining tax benefits, is the only one, and all the actions associated with its implementation, are artificially created construction.

Thus, there is a conflict of the rules of the "principle purpose", which has the international legal and internal legislative basis in the Russian Federation, and the principle of "business purpose", which is used to resolve disputes on the implementation of preferential terms of DTAA in the Russian courts even more often in 2019 after MLI BEPS implementation (Supreme Court of Russian Federation, 2019). Nevertheless, taking into account the fact that the Russian Federation supports the idea of Multilateral Convention and expresses its desire to use the provisions regarding DTAA, the country should strive for their practical implementation without attributing to the "modifying nature" of its norms (OECD, 2019). We believe that the efforts are demanded from both a single state and the international community in general in order to come to real a "common understanding" and develop universal anti-tax evasion instruments.

Simplified Limitation of Benefits (LOB)

The concept of benefits limitation is actively used in the tax agreements in the USA, Japan and India. They provide for the presence of such a category as an authorized person. It is a person, who is recognized as having the right to receive preferences under tax agreements. The report provides for five categories of authorized persons. Individuals are recognized as authorized persons a priori. This is probably due to the presumption that an individual will not become a resident of one of the states solely for the purpose of tax benefit but if such a situation occurs the connection between a new place and a resident will become to be strong enough to consider him an "authorized person". The second category includes governments, the Central Bank, other persons, who are directly or indirectly owned by Contracting States and other state entities. Then there are listed publicly traded companies, pension funds, and charities. Table 1 presents the possibilities for obtaining benefits and the conditions for receiving them.

Table 1. Getting benefits under the concept LOB

Name of condition	Possibility of obtaining benefits
The look-through approach	The possibility of obtaining benefits depends on the presence of direct or indirect participation of the recipient of income in the capital of the payer of income

The subject-to-tax approach	The provision of benefits is possible only in the jurisdiction, in which taxation takes place
Ownership-Base Erosion Test	More than 50% of the vote and the value of the shares of the company must be directly or indirectly owned by residents of the same country with the company. This is the core of the "possession" of the test.
General bona fide provision	A bona fide test, like a test for physical presence, includes one of the ways, in which a person can claim to exclude the tax base of income earned abroad
Active Trade or Business Test	The company must be engaged in active trading or business in the country of its actual location. Its activities in this country are significant in relation to its activities in a particular jurisdiction if the payer is a related party and income must be received in connection with this trade or business or related to it
Amount of tax provision)	Benefits are provided in such a way that their total amount does not exceed the amount of taxes actually paid by the taxpayer in the state, in which he is a resident
Stock exchange provision	Benefits provision depends on the categories of shares of an enterprise, in accordance with which they are quoted on a stock exchange, in the jurisdiction of which he is a resident or beneficiary is controlled directly or indirectly by the corporation, whose shares in a certain amount are traded on a stock exchange in the jurisdiction of its residency
Competent authority provision	The provision of tax benefits depends on permission from the tax authority of the state in which the company receives income.

As it stated above, the Russian Federation uses "simplified limitation of benefits" as an additional anti-evasive instrument. However, the provision of benefits limitation will not be used in the most of agreements in Russia because some other countries have not considered that it is necessary to apply such a provision (for example, Cyprus, Hong Kong, Luxembourg, the Netherlands, France and many other countries). At the same time, for example, these provisions will be considered in the agreements with India because of their ratification by both countries (Korving and Hulten of Deloitte, 2018). Figure 1 contains LOB rules classification signed by Russia with the other countries.

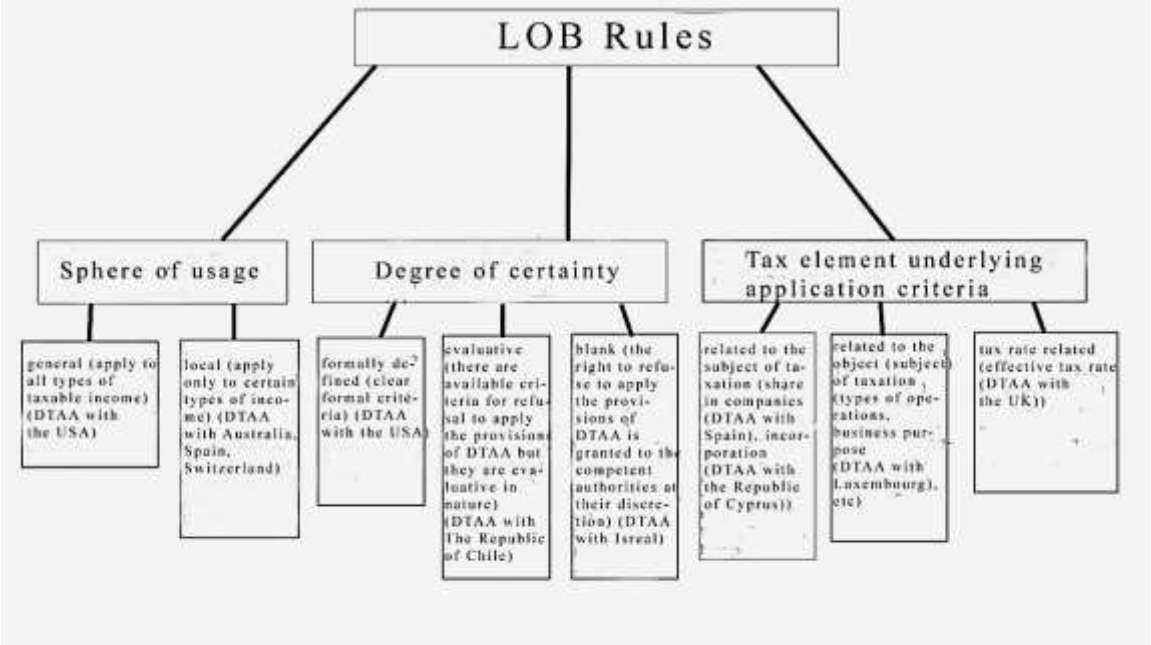

Figure 1. Classification of LOB rules, signed by the Russian Federation with the other countries that are included into DTAA at present

Herewith, some DTAA includes not only the grounds for applying the LOB rules but also exceptions to these rules (i.e. explicit grounds for granting taxpayers the right to apply the DTAA provisions). In some cases, the right for the benefits usage, provided by DTAA, may be provided even when the taxpayer does not formally pass basic tests that LOB rules contain and, consequently, he cannot be qualified for DTAA use on the general basis. It is done to compensate a certain formality of applying the LOB rules and to give them some degree of flexibility.

The following grounds for not applying the LOB rules can be found in existing Russian DTAA:

- certain composition of taxpayer participants (DTAA with the USA);
- certain procedure of the taxpayer's income usage (DTAA with the USA);
- certain characteristics of the taxpayer (as a rule, vigorous activity by the taxpayer) (DTAA with the Republic of Singapore);
- a special status of the subject (taxpayer) - recipient of income (government, public commercial or nonprofit organization) (DTAA with the Republic of Singapore);

- availability of special permission from the competent authority (DTAA with the USA) or lack of agreement by the competent authorities regarding non-application of DTAA to a certain taxpayer following a mutually agreed procedure (DTAA with the Republic of Lithuania).

Such variability in the content of the rules of simplified limitation of benefits creates the problems for tax authorities and courts in the practice of their application and coordination. The rule of simplified limitation of benefits is included in one or another form in 14 DTAA signed by Russia with the other countries. Nevertheless, these rules are used rarely in the Russian courts.

That is why it is hard to formulate and substantiate conclusions about domestic experience in implementing the LOB concept currently. The further practice should take shape by prioritizing LOB rules that have been formulated in the Multilateral Convention. Considering the foregoing, the author recommends to carry out diagnostics of the rules of simplified limitation of benefits in terms of their compliance with the requirements MLI currently. It is advisable to start taking actions today to adapt to amendments, including preparation of business case justification regarding the payment of passive income in foreign jurisdictions.

4.2 Permanent establishment

The modern instruments of the world tax system allow to provide control under the placement of representative offices of transnational corporations that use inconsistencies in the tax systems of some states. These inconsistencies allow companies to make transactions deprived of economic content, pursuing only the goal of erosion of the tax base.

However, the new types of business appear in the current economic conditions that are difficult to carry out tax control against them (Nevius, 2016).

The question of permanent establishment for the companies has been discussed for a long time in the foreign and domestic literature. It relates to the companies that are engaged in digital business (Koren, 2010; Arginelli *et al*., 2019). The possibilities of digital economic allow avoiding artificially permanent establishment status and supporting a sales form that does not lead to its formation by the usage of limited service brokers and distributors and using the separation process to circumvent time constraints and supporting such activity status as auxiliary or preparatory.

OECD position about the permanent establishment of digital corporations is the following: a permanent establishment should be in the state, where not only the website is located but also specialized equipment, dedicated to serving digital business (Petechel and Rekeda, 2017). The criterion introduces novelty, supplementing the three main criteria for determining the residency of the company. Besides it, in 2018 OECD Interim Report three main factors were formulated that should be taken into consideration while determining a digital permanent establishment:

- The profit factor in the territory of a particular jurisdiction in absolute terms and relative to the total income of an enterprise;

- The digital presence factor (for example, a local domain name or a specific payment method);

- The factor of the number of users of resources and platforms, through which entrepreneurial activity is carried out.

The most actual principle is Nexus, in accordance to which the permanent establishment provisions are used for the digital business on the international level. This term is used in tax law to describe the situation when an enterprise has a "link" or tax presence in a particular tax jurisdiction. Nexus is the connection between a tax jurisdiction such as a state and an enterprise that must collect or pay tax.

4.3 International arbitration

In the courts of the Russian Federation, recent practice deals mainly with tax disputes associated with the application of a reduced tax rate in respect of passive income and retraining of interest in dividends based on the use of thin capitalization. In official sources, there also can be highlighted several disputes related to the exchange of information and restrictions on benefits in relation to a tax treaty (LOB), however, they are not yet widespread and quite isolated.

Russia has not indicated its position relating the arbitration, as an alternative way to resolve tax disputes due to the fact that most DTAA already contain appropriate tools (Mooij, 2019). However, if Russia has chosen its own way in this issue, the continuous improvement of domestic legislation is needed to bring it in line with international standards. No clear results have been achieved on the implementation of MLI BEPS provisions regarding international tax arbitration, although, the corresponding work is planned in the Ministry of Finance of the Russian Federation (Siluanov, 2019). At this stage, it remains only to conclude that the instrument of international arbitration, as a way to resolve tax disputes in the Russian Federation, will not receive proper development. It can be assumed that the lack of a specific position on the use of international arbitration is a consequence of the increasing "anti-Russian rhetoric" in the resolution of cross-border tax disputes (Ivanov, 2019). However, recently, officials from the Ministry of Finance and the Federal Tax Service have been actively involved in OECD international events, where a discussion of the institute of international arbitration takes place. Consequently, it can be assumed that Russian financial and tax authorities plan to take into account international experience and recommendations as part of the implementation of MLI BEPS in national legislation (Mooij, 2019).

As indicated above, Russia did not include an arbitration clause in its tax treaties (there were only a few exceptions) prior to the signing of the multilateral document. However, international arbitration is also related to cross-border taxation and cross-border transactions involving the jurisdiction of the Russian Federation in some cases:

1) international arbitration of private law disputes related to cross-border taxation: cross-border mergers and acquisitions; cross-border business purchase; VAT as part of the price in the contract; losses due to non-compliance or (and) aggressive tax planning;

2) international arbitration in respect of contracts (quasiparticle nature) between the state and the investor that include some provisions regarding taxation and guarantees for the investor: for example, Production sharing agreements and contracts between the administration of the special economic (tax) zone (project of the International Bureau of Fiscal Documentation on special tax zones and the presentation of relevant reports at the Rotterdam Conference in 2017, at the Vigo Conference in 2016);

3) arbitration, based on multilateral investment treaties, related to certain tax issues;

4) several projects related to the creation of tax arbitration within the framework of regional integration organizations with the participation of Russia (EAEU, BRICS; in particular, the project of multilateral tax arbitration convention for BRICS). The positions of states were developed and presented at the BRICS Legal Forum of Experts and Developing Countries (Russia, Yekaterinburg, June 2017) and at the IV BRICS Legal Forum (Russia, Moscow, December 2017).

4.4 Questions for subsequent elaboration on MLI BEPS implementation

A study of the BEPS Multilateral Convention and its impact on the Russian tax system suggests that significant practical problems arise in connection with expanding the arsenal of protective measures for DTAA in states ratifying MLI BEPS, despite a fairly deep institutional study of anti-evasive strategies and mechanisms at the international level.

A coherent understanding of equally worded provisions in DTAA is indeed a laudable goal but it should be noted that at this stage it is not clear whether it is achievable. Using the example of the Russian tax system, it was demonstrated that many common anti-evasive instruments are developed at the level of national legislation or are fixed in the relevant DTAA. In this system, international special MLI BEPS rules (such as LOB and PPT) are not often perceived as preferable in practice.

Therefore, it is appropriate to raise the following questions for further discussion:

1) Is there a need for special rules aimed at counteracting abuses by taxpayers if the general conservation standards and concepts of national level (or at the level of DTAA) have proved their effectiveness and passed the "test of time"? In what cases can the various safeguards of DTAA and the national tax laws of the DTAA member states complement each other and where do they enter into competition with each other that should be decided in favor of a single norm (the principle of applying more special norms)?

Despite the priority of international norms over national ones, it is national legislation that sets definitions of concepts used in agreements, for example, whether a person is a resident or income is a dividend. It is noted that some provisions of the Multilateral Tax Convention indicate directly the possibility of applying national standards (Article 9) (OECD, 2015). Adopting any anti-evasive provisions proposed by BEPS, countries should be guided by the objective conditions of their legal system and also features of the concluding (or already concluded, during making changes to it) agreement upon their implementation.

2) Do non-OECD countries (and even some OECD countries) attach normative value to the BEPS project? Can the OECD's new comments reach the status of generally accepted manual among countries after such a short period?

OECD and non-OECD countries use different approaches to deal with cases of “treaty shopping”, against which the rules of the current version of the OECD Model Convention are not directed. Based on the benefits and limitations of such approaches, the “minimum standard” of actions is presented in section

A of the OECD that are aimed at countering tax evasion and that states must follow to ensure a minimum level of protection from "treaty shopping" (Kleist, 2018).

3) Can tax authorities and judges, who are familiar with the concepts of domestic law (which may or may not be similar, but in any case may have minor, although, important differences), take a consistent approach?

The principle of being supremacy prevails over form in Russian courts in the field of international taxation cases. Being extremely attractive from the point of view of justice and economic feasibility of potential court decisions, the problem is that this principle leads to legal chaos in the conditions of weak development of institutions and tax culture. In particular, the concept of unreasonable tax benefit (and individual components of this concept) and the rules on the actual owner of the income apply to tax agreements. Moreover, the practice of applying such rules is a relatively new phenomenon for a country and the courts demonstrate an inconsistent or not very traditional approach to such rules in a number of cases (Milogolov, 2015; Bykov and Frotscher, 2016).

In our opinion, discrepancies in the interpretation of terms and the application of similar concepts, developed within the framework of national legislation, should be resisted since it is obvious that an international "common understanding" is supposed to be introduced through the uniform adoption of recommendations, developed by the OECD as an embodiment of positive global experience in countering BEPS. States that ratify the MLI BEPS should seek to interpret the terms used in DTAA in accordance with a "common understanding" of the terminology of anti-avoidance instruments. At the same time, it is necessary to take into account the context, in which certain terminology is used, as well as the object and purpose of MLI BEPS in interconnection with the DTAA, which it changes, so that this does not lead to an infringement of the interests of a particular state.

In addition, the question of the relationship of various anti-evasive concepts (LOB, PPT, etc.) is also unresolved in their application to protect DTAA. Depending on the circumstances, applying the same concept may lead to different results. The decisive role must be played by the right choice of anti-evasive concept in each case. It is necessary to solve the issue of the simultaneous application of several concepts. This situation raises another question: does the impossibility of applying one mechanism (for example, whether the taxpayer meets the criteria for permanent establishment) imply the impossibility of depriving the taxpayer of the right to use DTAA by using another protective mechanism (for example, PPT or LOB)?

This study indicates the need for the wording of the term "digital tax establishment", as it is not disclosed either in the OECD international recommendations or at the level of national tax legislation. In our opinion, digital tax establishment should be understood as the place, through which the enterprise conducts its activities in general or in part, including the state or territory of the digital presence, in which the bulk of users and the place of receipt of the main income are concentrated.

In the opinion of the author of this study, the effectiveness of the application of the provisions on permanent establishment will be facilitated by the use of the "tax pegging" principle in connection with the profits of permanent establishment of foreign organizations registered in offshore jurisdictions, which will contribute to:

1) eliminating the possibility of transferring taxable profits by transnational corporations to low tax jurisdictions by using the benefits and advantages, provided in connection with the acquisition of the status of a permanent establishment;

2) expanding the tax base of permanent establishment of foreign organizations, registered in low tax jurisdictions.

Regarding Russia's participation in the arbitration of international tax disputes, it should be noted that the state cannot completely isolate itself from international arbitration procedures in the modern conditions even if the relevant state has not included an arbitration clause in its tax treaties and has not accepted MLI BEPS obligations regarding tax arbitration.

V. Conclusion

Summing up the present study, it can be noted that the Multilateral Convention is a timely instrument, which has a very ambitious goal to optimize of a large array of international agreements and to harmonize them with international standards. However, since it is a document of soft force, which modifies the legislation of the countries that have ratified it, the issue of provisions applying depends on many factors.

The questions, posed in this study, require further theoretical and practical understanding. Lack of clear and understandable scientifically based rules for the coexistence and joint application of various protective mechanisms inside DTAA and also the rules that govern the joint and subsidiary application of the protective norms, contained in the national tax laws of the member states of DTAA to protect the provisions of DTAA from illegal use by taxpayers, will inevitably lead to a loss of controllability of this process, a violation of the balance of public and private interests and, as a result, to the loss of the main dignity and main purpose of the existence of tax law - the predictability of tax relations.

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