

Triangular cases in residence transfer: Action n.15 BEPS Action Plan

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Action Plan 15: develop a multilateral instrument



Interactions of domestic tax systems can lead to overlaps in the exercise of taxing rights that in turn can result in double (non) taxation

Such frictions cannot be dealt with by bilateral treaties

Different BEPS actions: some of them requests amendments to the Bilateral Tax Conventions

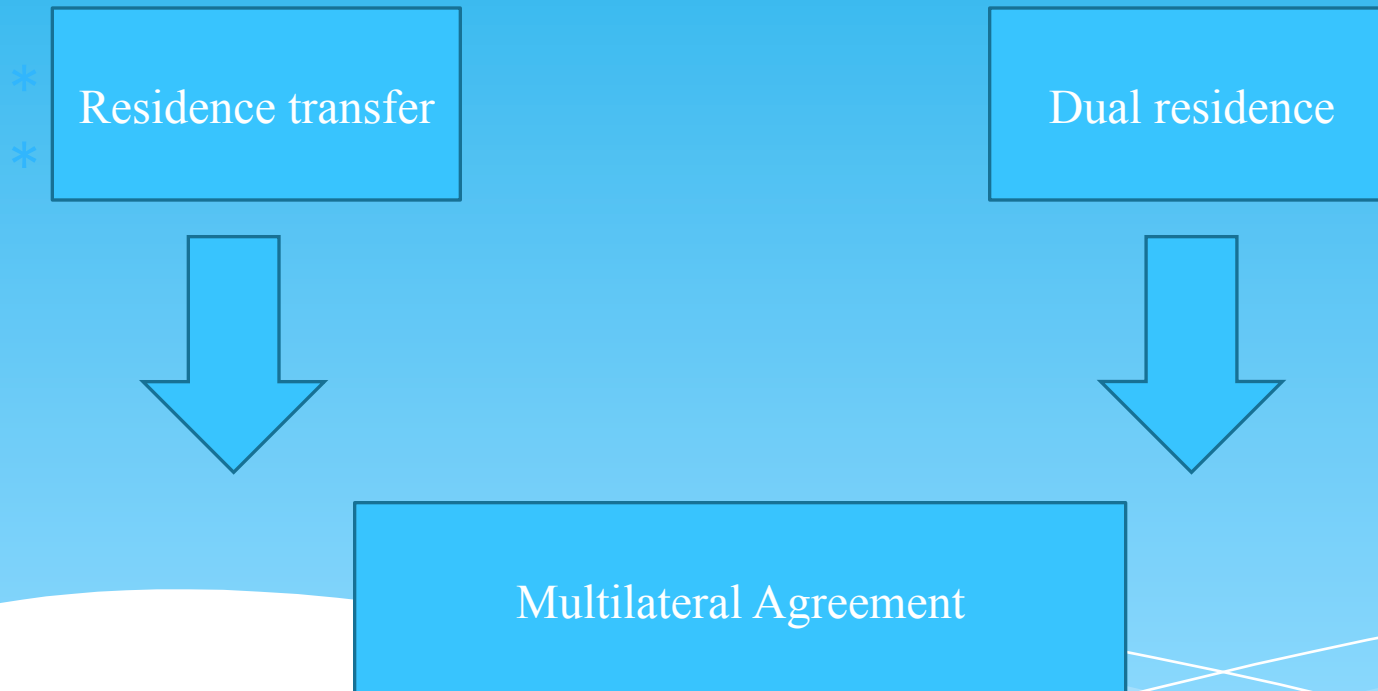
One solution: creating a multilateral instrument, as a global response to increase transparency and certainty and to modify BTC in a uniform manner.

What happens with individuals' treaty abuse?



- * Action Plan 5 underlines “treaty abuse” as one of the most important source of BEPS concerns.
- * A treaty abuse identifies situations in which transactions are entered or entities established in other state only for the purpose of enjoying the benefit of particular tax treaty which otherwise would not be applicable for example because the person claiming the benefit is not resident of one of the contracting state
- * According to the “guiding principle” of par. 9.5 of the OECD MTC of art. 1, obtaining a favorable treatment on application of a tax treaty is not sufficient to have an improper use of treaty: treaty benefits “*should not be available where a **main purpose** for entering into certain transactions was to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions*”

Double non taxation affecting individuals' fiscal residence

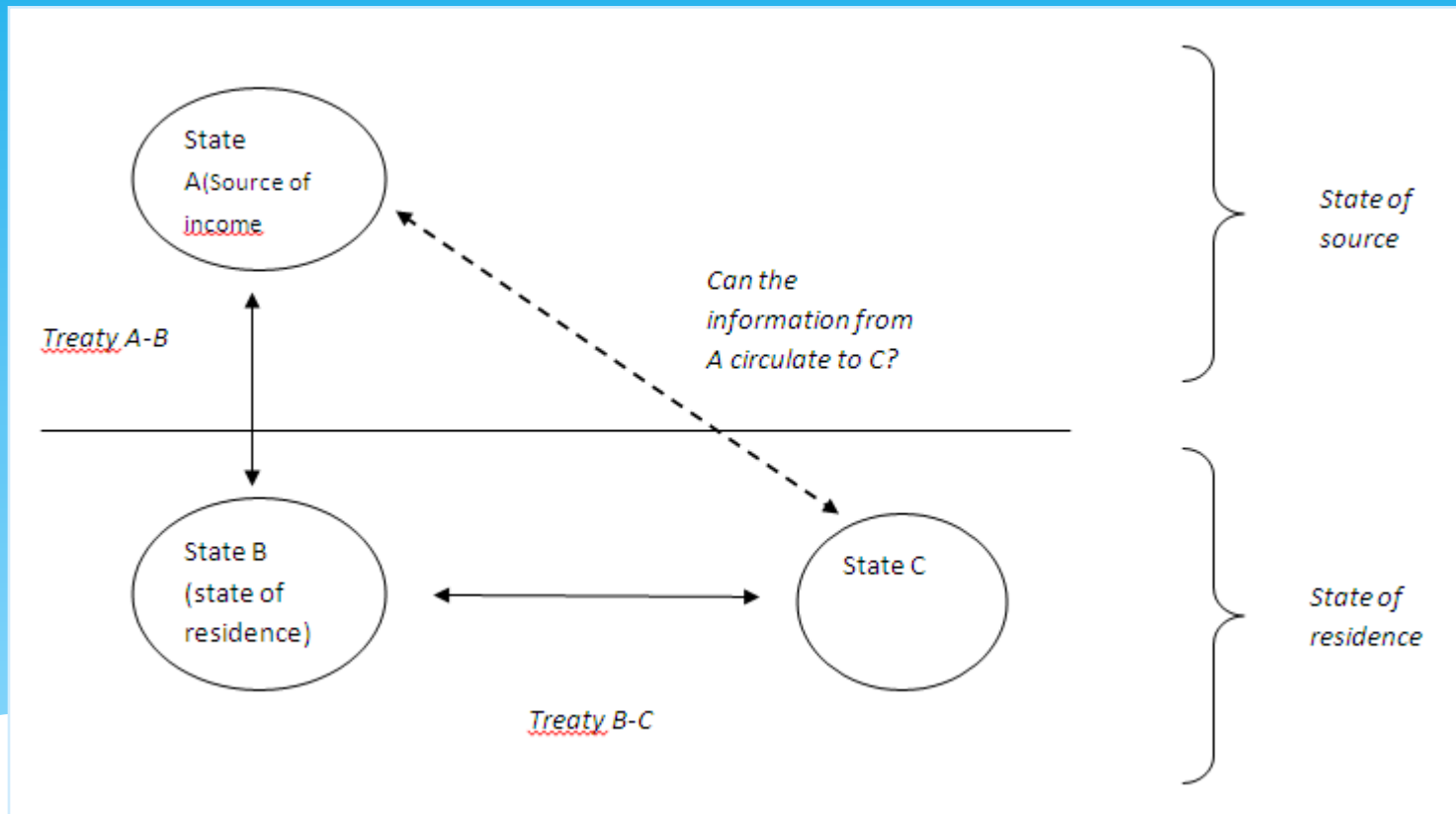


The domestic Italian anti-avoidance rule in residence transfer



- * Assumption of residence in Italy if the taxpayer migrated to tax haven;
- * Burden of proof on the taxpayer;
- * This anti abusive rule is part of the domestic Italian tax system, is not addressed in tax treaties and therefore is not affected by them.

Triangular cases: residence transfer



Triangular cases in residence transfer and dual residence

- * Uncoordinated tax systems can lead to situations where a taxpayer can take advantages of double non taxation arising by means of gaps of bilateral tax treaties or due to a (partial) lack of information;
- * Cases of individuals' dual residence are generally solved by way of par. 2-3 of OECD MTC through the application of the tie-breaker-rules; but when more than two countries are involved which bilateral tax treaty is applicable or prevail? The Vienna Convention on Law of Treaties does not give a solution.
- * Relying on existing multilateral Agreements or endorsing the OECD efforts in the development of a multilateral tax treaty can solve such types of issues.

Triangular cases: dual residence



Thank you for your attention!