

# The Relevance of the Preamble for Treaty Entitlement

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- 1. Introduction**
- 2. Objectives of the Preamble**
  - 2.1. Elimination of double taxation
  - 2.2. Avoidance of tax abuse
  - 2.3. Without creating opportunities for non-taxation or reduced taxation
  - 2.4. Tax evasion
  - 2.5. Tax avoidance
  - 2.6. Treaty shopping arrangements
- 3. Preamble's function in multilateral tax treaties from a Treaty Entitlement perspective**
  - 3.1. Decision N° 578 – “Pacto Andino”
  - 3.2. Nordic Multilateral Tax Treaty
  - 3.3. Other relevant Multilateral Conventions on specific tax matters
- 4. Interpretative considerations on the Preamble from a Treaty Entitlement perspective**
- 5. Conclusions**

## 1. Introduction

The role that Preambles have played with respect to treaty interpretation and treaty entitlement has not been an undisputed issue to date, particularly in the tax field. Perhaps due to its lack of substantive content or ambiguous language, its practical application has not been uniform. Furthermore, its relevance and particular objective remains an ongoing discussion both for scholars and courts. For the purposes of this chapter, the author understands, in general, that the Preamble of a treaty “consists of a set of recitals which commonly include the motivations, aims and considerations of the Contracting States and the affirmation of the shared values which have played a part in the conclusion of the treaty.”<sup>1</sup>

Prior to the OECD Base Erosion and Profit Shifting Action Plan (“BEPS”),<sup>2</sup> in the view of the International Fiscal Association (“IFA”),<sup>3</sup> the purpose of most Double Tax Conventions (“DTC”) expressed in the Preamble was to avoid double taxation *and* prevent fiscal evasion, or just to avoid double taxation. In other cases, the purpose of a pre-BEPS DTC considered the enhancement of economic cooperation. In contrast, only a few pre-BEPS DTCs referred to preventing tax avoidance, though without referring to treaty shopping arrangements. Moreover, IFA concluded also that “treaty practice in many jurisdictions emphasized the limited role that Preambles have played so far in the interpretation of tax treaties.”<sup>4</sup>

In that context – and certainly after BEPS – the 2017 version of the OECD Model Tax Convention on Income and on Capital (“OECD MC”)<sup>5</sup> has certainly included in its text several improvements compared to former versions aimed at addressing the above-mentioned situations. In particular, Action 15 of BEPS, which resulted in the enactment of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”),<sup>6</sup> strongly influenced the current version of the OECD MC. Despite the circumstance that Multilateral Tax Conventions are not entirely new in the international tax scenario,<sup>7</sup> the MLI is intended to have a far more reaching effect than any other multilateral tax instrument enacted in the past. Such a conclusion is based

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1 De Broe Luc, “*Role of the Preamble for the Interpretation of Old and New Tax Treaties and on the Policy of the Prevention of Treaty Abuse*”, *Bulletin for International Taxation*, April/May 2020, IBFD, p. 163.

2 <https://www.oecd.org/tax/beps/about/#:~:text=BEPS%20refers%20to%20tax%20planning,such%20as%20interest%20or%20royalties.>

3 IFA Cahiers de Droit Fiscal International – Volume 105, A: Reconstructing the Treaty Network (2020), p. 24.

4 IFA Cahiers de Droit Fiscal International (2020), op. cit., p. 24.

5 <https://www.oecd.org/ctp/treaties/articles-model-tax-convention-2017.pdf>.

6 <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.pdf>.

7 Bravo, Nathalie “*The Multilateral Tax Instrument and Its Relationship with Tax Treaties*”, *World Tax Journal*, October 2016 (IBFD), p. 280.

not only from the perspective of the objectives that the OECD MC incorporated today as a result of the MLI, but also from an empirical view: MLI signatories are growing day by day.<sup>8</sup>

The new objectives of the OECD MC introduced by the MLI are certainly closely related to DTC entitlement and can be found in the Preamble, which currently reads as follows:

Preamble to the Convention

(State A) and (State B),

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this CONVENTION for the indirect benefit of residents of third States),

Have agreed as follows: (...).

The relevance of these new objectives is such that Article 6, paragraph 1 of the MLI, which introduced the new Preamble in the notified Covered Tax Agreements (“CTA”), is deemed as a minimum standard<sup>9</sup> of the rules aimed at preventing treaty abuse of that Convention. A minimum standard in the context of MLI could be understood as a minimum level of protection against treaty abuse, which comprises basically two elements: a preamble, which states the intention of the parties aimed at not creating opportunities for taxpayers to carry out abusive arrangements; the implementation of such intention, which is carried out in practice by means of a Limitation of Benefits (“LOB”) provision and/or a General Anti Avoidance Rule (“GAAR”), i.e. the principal purpose test (“PPT”).<sup>10</sup>

This chapter aims to analyze the scope of the main concepts that are now be a part of OECD MC Preamble, from a perspective of treaty entitlement (section 2). Moreover, it will address the role the Preamble should have in the interpretation of a DTC, bearing in mind different but complementary perspectives on the topic

8 According to the OECD official statistics, as of today, 95 jurisdictions already signed the MLI, while 4 others already expressed their intent to sign such instrument (i.e. Algeria, Eswatini, Lebanon and Thailand). <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>. Last reviewed: 20 March 2021.

9 “Although there is a political commitment of the G20 and OECD member countries on the implementation of these four minimum standards, all minimum standards suggestions in the BEPS final reports must be classified as soft law from a legal perspective (...). The OECD itself states that all BEPS outputs – including the minimum standards suggestions – are not legally binding, but there is an expectation that they will be implemented accordingly by countries that are part of the consensus.” (Langer, Andreas “The legal relevance of the minimum standard in the OECD/BEPS Project”, Chapter 5 in “The OECD Multilateral Instrument for Tax Treaties – Analysis and Effects”, Lang Michael et al. (Eds.), Wolters Kluwer, (2018) p. 89–90.

10 De Broe, op. cit., p. 171.

(section 3). For such a purposes, a comparative analysis on the role of Preambles in the treaty entitlement in multilateral tax instruments will also be performed (section 4). Finally, the chapter will shed some light on the conclusions of our analysis.

## 2. Objectives of the Preamble

### 2.1. Elimination of double taxation

The elimination of double taxation has a long-standing story in international tax treaty history. According to the OECD MC Commentary, 70 bilateral general conventions have already been signed between countries – today members of the OECD – , whose object was the elimination of double taxation when the Council of the Organization for European Economic Cooperation (“OEEC”) adopted its first Recommendation concerning double taxation on 25 February 1955.<sup>11</sup> Despite the foregoing, the works in the field had already been started in 1921 by the League of Nations. This work led to the drawing up, in 1928, of the first model bilateral convention and, finally, to the Model Conventions of Mexico (1943) and London (1946), the principles of which were followed with certain variants in many of the bilateral conventions concluded or revised during the subsequent decades.<sup>12</sup> A few years after such initial developments, the elimination of double taxation was still a key pursued objective. Indeed, on 30 July 1963, its Council adopted a Recommendation concerning the avoidance of double taxation and called upon the Governments of member countries, when concluding or revising bilateral conventions, to conform to the so-called “Draft Double Taxation Convention on Income and Capital”.<sup>13</sup> After its initial appearance in the 1963 OECD MC, the elimination of double taxation has, thus, always remained a key element, not only in the subsequent versions of the OECD MC but also in the United Nations Model Double Taxation Convention between Developed and Developing Countries (“UN Model”),<sup>14</sup> which reveals that two of the most relevant international taxation organizations have made consistent efforts in time to tackle double taxation. Both Models have, however, suffered updates and amendments mainly due to changing economic conditions, increase of cross-border operations, new technology and the sophistication of business models.

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11 OECD MC (2017), “Introduction”, paragraph 4.

12 The Model Conventions of Mexico and London had indeed a strong influence in the two Model Tax Conventions of the United Nations and the OECD, respectively, which are nowadays the instruments that are usually followed by countries negotiating a DTC (OECD MC Commentary (2017), op cit. paragraph 4.

13 OECD MC Commentary (2017), op cit. paragraph 6.

14 “*The United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention) forms part of the continuing international efforts aimed at eliminating double taxation (...)*”. (UN Model (2017), “Introduction”, paragraph 1).

Lately, though the digital economy has imposed new challenges on international taxation matters,<sup>15</sup> the elimination of double taxation has still remained a core objective of the OECD/G20 Inclusive Framework on BEPS.<sup>16</sup> In the author's view, the latest developments on the elimination of double taxation have not amended significantly its original scope and understanding, but rather the manner in which it is currently being addressed by most countries. In this respect, from an historical perspective, the bilateral approach has been followed to achieve the elimination of international double taxation. This fact could be easily verified by having a look at the number of DTCs agreed by countries so far.<sup>17</sup> Such a fact leads to conclude that bilateral solutions have been the general rule as to the elimination of double taxation. In contrast, today, the OECD has moved from the "bilateral paradigm" to tackle double taxation to a "multilateral paradigm", which was only exceptionally followed to date.

The switch to a new multilateral approach to tackle double taxation is clearly one of the main *ratio legis* behind the conclusion of the MLI.<sup>18</sup> Indeed, paragraph 5 of the OECD MLI Explanatory Statement stated that "Action 15 of BEPS ("Developing a Multilateral Instrument to Modify Bilateral Tax Treaties") concluded that a multilateral instrument, providing an innovative approach to enable countries to swiftly modify their bilateral tax treaties to implement measures developed in the course of the work on BEPS, is desirable and feasible (...)" In light of the above, while the elimination of double taxation could be seen as one of the objectives that have always been present in the OECD MC from its inception, it is worthy to note that the OECD MC Preamble remained silent in this respect until the release of its latest version of 2017. It is precisely the MLI – Article 6 of Part III on "Treaty Abuse" – which emerged to solve this deficiency by requiring that a "Covered Tax

15 "These tax challenges were first identified as one of the main areas of focus of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, leading to the 2015 BEPS Action 1 Report (the Action 1 Report).<sup>1</sup> The Action 1 Report found that the whole economy was digitalizing and, as a result, it would be difficult, if not impossible, to ring-fence the digital economy. In March 2018, the Inclusive Framework, working through its Task Force on the Digital Economy (TFDE), issued Tax Challenges Arising from Digitalization – Interim Report 2018 (the Interim Report)<sup>2</sup> which recognized the need for a global solution".

16 In this respect the "OECD/G20 Inclusive Framework on BEPS Report on "Addressing the Tax Challenges Arising from the Digitalization of the Economy – Highlights (2020)" provides that "The 137 members of the OECD/G20 Inclusive Framework recognized the Blueprint on Pillar One as a "solid foundation for future agreement that would adhere to the concept of net taxation of income, avoid double taxation and be as simple and administrable as possible (...)"

17 Indeed, one of the points considered by the OECD to work on the MLI as a multilateral and efficient solution to address the new challenges that the digital economy brought up was the cost and time required to renegotiate more than 3000 bilateral DTCs (OECD MLI Explanatory Statements (2016), paragraph 4).

18 The MLI Preamble already provides in this respect that "Conscious of the need to ensure swift, coordinated and consistent implementation of the treaty related BEPS measures in a multilateral context;" and "Recognizing the need for an effective mechanism to implement agreed changes in a synchronized and efficient manner across the network of existing agreements for the avoidance of double taxation on income without the need to bilaterally renegotiate each such agreement;".

Agreement<sup>19</sup> shall be modified in the sense of replacing its Preamble wording by the new version developed by OECD MC (2017). Before the MLI, only the Title of the former OECD MC referred briefly to the “avoidance of double taxation with respect to taxes on income and capital”.

In the author’s opinion, the changes introduced by the MLI on the latest OECD MC Preamble regarding elimination of double taxation are not very significant in terms of adding new substantive elements to the concept and, in particular, as to the matter of treaty entitlement. However, even when the Preamble might now undoubtedly be deemed as a DTC interpretative element according to Article 31 of the Vienna Convention on the Law of Treaties (“VCLT”),<sup>20</sup> its relevance from a treaty entitlement is only secondary, if one considers the substantive anti-abuse provisions incorporated by the MLI. Hence, the new OECD MC Preamble should not be interpreted as a “game changer” provision in eliminating double taxation. Double taxation, therefore, remains still as an open issue that explains the existence of other OECD MC (2017) provisions such as article 25 on “Mutual Agreement Procedure”.

### 2.2. Avoidance of tax abuse

Until the 2014 OECD MC version, the Preamble did not make any reference to the avoidance of tax abuse. The latest version of the OECD MC does not refer to it as such. Instead, it refer explicitly to a particular form of tax abuse in the context of DTCs, i.e. treaty shopping arrangements. Its inclusion in the new OECD MC Preamble came as a result of the OECD BEPS plan, particularly Action 6<sup>21</sup> on Prevention of Treaty Abuse and Action 15 on MLI.<sup>22</sup> Avoidance of tax abuse in the context of DTC entitlement has become the main goal pursued by the OECD MC. As explained above, such approach might be concluded, based on: i) considering it as a minimum standard for MLI signatories; ii) the inclusion of substantive provisions in the OECD aimed at tackling the avoidance of tax abuse (i.e. LOB and PPT provisions).

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19 Pursuant to article 2, paragraph 1 of the MLI “*The term “Covered Tax Agreement” means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered): i) that is in force between two or more: A) Parties; and/or B) jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible; and with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention*”.

“1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (...)”.

21 <https://www.oecd.org/tax/beps/beps-actions/action6/>.

22 <http://www.oecd.org/tax/beps/beps-actions/action15/>.

Before OECD MC (2017), attempts to overcome the lack of explicit reference to avoidance of tax abuse in DTCs were addressed by arguing that the former OECD MC might contain an inherent anti-abuse rule, based on articles 26, 31 and 32 of the VCLT, according to which benefits are to be denied to structures that abuse the rules of the treaty.<sup>23</sup> However, such a teleological interpretation of the DTCs provisions has been rejected by some courts of a number jurisdictions,<sup>24</sup> which “despite the clear treaty shopping nature of the structure and the fact that the prevention of fiscal evasion was included amongst the treaty’s objective, did not depart from the literal interpretation (...)”.<sup>25</sup> The jurisprudence of international courts – in non-taxation matters – appears also to follow the latter order of ideas, establishing in one case that “the preamble in a treaty between the two states only expressed general desires”,<sup>26</sup> and in another case that “a preamble cannot alter the clear meaning of a treaty provision”.<sup>27</sup>

On a closer look at the origin of the abuse of law doctrine, it is relevant to remark that before the OECD gave the avoidance of tax abuse the status of a rule of interpretation in the OECD MC Preamble, the “abuse of rights” was already historically considered as a principle of international law.<sup>28</sup> Such a position has been built up on Article 26 of the VCLT,<sup>29</sup> which contains the “*pacta sunt servanda*” principle. It is true that such provision does not refer explicitly to the abuse of rights, however the VCLT Commentary does refer to it within the discussion that members had when negotiating its provisions.<sup>30</sup> The discussion on whether the abuse of tax treaty has been deemed by the OECD MC as a rule of interpretation rather than a direct application rule is not trivial, particularly in respect of treaty entitlement. In the author’s opinion, a provision such as Article 26 of VCLT influences directly how legal provisions should operate; in contrast, a rule of interpretation is aimed at determining the scope and meaning of a certain provision. In other words, an interpretation provision is only the start, whereas an application

23 See, for instance, the decisions of the Tax Court of Canada (TCC) in CA: TCC, 18 Aug. 2006, *Mil Investments S.A. v. Her Majesty the Queen*, 9 ITLR 25, Case Law IBFD and the Federal Court of Appeal (FCA) in CA: FCA, 13 June 2007, *Mil Investments S.A. v. Her Majesty the Queen*, 9 ITLR 1111, Case Law IBFD.

24 *Guidant Japan Case* (Tokyo High Court, 28 June 2007; and *Japan-Ireland Tax Treaty Case* (Tokyo High Court, 29 October 2014).

25 De Broe, op. cit., p. 168.

26 International Court of Justice (“ICJ”), *Guinea Bissau v. Senegal* (1991) quoted by Schwarz Jonathan, “The impact of the New Preamble on the Interpretation of Old and New Treaties and on the Policy of Abuse”, Bulletin for International Taxation, April/May 2020, IBFD, p.177.

27 US – Iran Claims Tribunal (“US-ICT”), “USA, Federal Reserve Bank v. Iran, Bank Markazi”, (2000), quoted by Schwarz, op. cit. p. 177.

28 Byers Michael, “Abuse of rights: An Old Principle, A New Age”, (2002), 47 McGill LJ., 389.

29 “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”.

30 “Some members felt that there would be advantage in also stating that a party must abstain from act as calculated to frustrate the object and purpose of the treaty. The Commission, however, considered that this was clearly implicit in the obligation to perform the treaty in good faith and preferred to state the *pacta sunt servanda* rule in as simple a form as possible.”

provision represents where a provision should lead to. In the author's opinion, perhaps the OECD followed the interpretative path rather than that of directly applicable legal technique, anticipating that the Preamble will be deemed by the courts as a "second line" provision on treaty entitlement, only aimed at ensuring that tax treaties are not abused leaving the main role to achieve such a goal to the substantive anti-abuse provisions introduced by the MLI (i.e. PPT, LOB provisions).<sup>31</sup> As will be observed in the following sections of this chapter, such a position was perhaps also adopted because of the limited relevance that courts around the world have given so far to the OECD MC Preamble regarding tax treaty entitlement.

The fact that the new OECD Preamble refers only explicitly to a specific form of tax treaty abuse (i.e. treaty shopping arrangement) should not be interpreted as excluding other forms of treaty abuse. Thus, the access to treaty benefits should be denied not only to structures qualified as treaty shopping arrangements, but also to structures that may be qualified, in general, as abusive. As might be concluded from the works of the OECD<sup>32</sup> and in the opinion of scholars, the limited explicit reference to treaty shopping arrangements is mainly explained by the fact that these are the most common abusive tax planning strategies used by taxpayers. In the author's opinion, although the approach followed by the OECD MC might be reasonable – i.e. it is difficult to conclude an exhaustive list of "abusive conducts" – as the provision is aimed at denying access to DTC benefits, under general legal interpretation principles, it should be interpreted strictly. Therefore, even if other examples are to be found in the OECD Commentary, one would have expected that the Preamble provides further guidance as to what elements constitute an abusive arrangement. Such approach might imply, on the one hand, providing more legal certainty to the taxpayer and, on the other hand, limiting the possibility of judicial ambiguous interpretations on the subject.

The emphasis that the OECD puts on treaty shopping arrangements is also explained by the ever-growing number of DTCs concluded by many countries

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31 Other types of treaties have followed another path and included an explicit rule that denies treaty entitlement, when abusive conducts are carried out. For instance, Article 9.15. – on Denial of Benefits – of the Trans-Pacific Partnership Agreement provides that:

"1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise:

(a) is owned or controlled either by persons of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of any Party other than the denying Party".

32 "Effective rules to tackle the abuse of tax treaties are under development and will be delivered by September 2014. These rules will first address treaty shopping arrangements (...). They will also prevent the use of structures involving the use of companies that claim to be resident of two treaty countries to achieve double non-taxation. Further, it will address unintended cases of non-taxation that result from tax treaties, in particular where countries eliminate double taxation through the exemption method". (OECD (2014), "Addressing the Tax Challenges of the Digital Economy, OECD/G20 Base Erosion and Profit Shifting Project", OECD Publishing, p. 113.



around the globe, which indirectly fosters treaty shopping arrangements. Some taxpayers – usually multinational enterprises (“MNE”) comprising a number of subsidiaries located in different jurisdictions – have taken advantage of gaps and mismatches within the current extensive DTC network of some countries to artificially lower its tax burden.

In the author’s view, the core development of the concept of tax abuse in the OECD MC (2017) has been carried out by the MLI not by means of its new Preamble provision but by introducing a number of substantive provisions aimed at addressing the abuse of tax treaties.<sup>33</sup>

### 2.3. Without creating opportunities for non-taxation or reduced taxation

The phrase “without creating opportunities for non-taxation or reduced taxation” is an innovation introduced by the OECD MC (2017). Nonetheless, the topic is not entirely new, as international measures aimed preventing double non-taxation or reduced taxation have already addressed this issue before the enactment of the MLI and the latest version of the OECD MC.<sup>34</sup> Moreover, though the issue exceeds the scope of this work, it is worthy to note that double non-taxation has also been a topic that has been discussed from the perspective of European Union (“EU”) law as potentially qualified as state aid.<sup>35</sup>

It might be argued that prior to the OECD MC (2017), interpreting DTCs in good faith should not lead to non-taxation or reduced taxation. However, it is also worthy to remark that a literal interpretation of the OECD MC could also lead to conclude the opposite. Furthermore, there is the opinion<sup>36</sup> that it is not a purpose of the OECD MC to prevent double non-taxation, as tax treaties are only aimed at allocating taxing rights among Contracting States. In other words, tax treaties do not include obligations for Contracting States to levy taxes, it being a matter of domestic law. In the opinion of Professor De Broe, the latter leads to the conclusion that “Only cases of double non-taxation that result from structured tax eva-

33 According to MLI Explanatory Statement, paragraph 88, the Report on BEPS Action 6 includes three alternative rules: the first is a general anti-abuse rule based on the principal purpose of transactions or arrangements (i.e. PPT). In addition to this, BEPS Action 6 Report provides two versions – a simplified and detailed version of a specific anti-abuse rule (i.e. LOB provision), which limits the availability of treaty benefits to persons that meet certain conditions.

34 For instance, the wording suggested in point 3.2 of the European Commission Recommendation “on aggressive tax planning”, Brussels, 2012 states: “Where this Convention provides that an item of income shall be taxable only in one of the contracting States or that it may be taxed in one of the contracting States, the other contracting State shall be precluded from taxing such item only if this item is subject to tax in the first contracting State”.

35 For extensive analysis see Marchgraber, Christoph, “Double (Non-) Taxation and EU Law.”, Wolters Kluwer, (2017).

36 De Broe, op. cit., p.172.

sion or avoidance, including treaty shopping are intended to be within the scope of the OECD MC. The new OECD Preamble should not modify the former conclusions”.<sup>37</sup> In the author’s view, it is not straightforward that the prior versions of the OECD MC covered situations of non-taxation or reduced taxation, in the sense of stating a clear objective that such transactions should be excluded from treaty benefits. From that perspective, the new Preamble wording came to provide more legal certainty by expressly stating that such situations are now specifically covered by the OECD MC.

Despite the above, the OECD MC new objective to avoid “creating opportunities for non-taxation or reduced taxation” is quite ambitious. It is true that some situations of non-taxation or reduced taxation occur in practice because of taxpayers taking advantage of DTC provisions. Nonetheless, it should be also recognized that a high number of non-taxation or reduced taxation cases are triggered, not only based on DTCs but also by their interaction with domestic provisions of a certain country.

As a result of the above, the phrase “without creating opportunities for non-taxation or reduced taxation” should be deemed not only as a DTC interpretative provision but also as tax policy provision directed to the countries that wish to enter into a DTC. As a result, countries should, on the one hand, not only tackle other current international taxation issues expressed in the OECD MC Preamble but also avoid creating new opportunities for non-taxation or reduced taxation. Furthermore, this phrase also sends a message to the Governments to prevent starting future DTC negotiations with countries that levy low or eventually no taxes on transactions carried out under its jurisdictions.<sup>38</sup>

With the inclusion of a reference to non-taxation and reduced taxation in the OECD MC Preamble, the OECD is again – in the author’s opinion – trying to explicitly “ensure”, in regard to DTCs, that such cases will effectively be covered by the DTCs and should be taken into account when interpreting its provisions. However, as the Preamble is only a general provision on the motivations and shared values of the Contracting States, its relevance from a treaty entitlement perspective still remains limited, and it should only be deemed as accessory to the substantive anti-abuse provisions of the OECD MC. In other words, the amendments introduced in the wording of the new Preamble do not affect its legal nature.

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37 De Broe, op. cit., p. 172.

38 For instance, the US Report included in the 2020 IFA Cahiers du Droit Fiscal International provides in this respect that “*it has long been U.S. policy to enter into tax treaties only when the effect is to eliminate double taxation – thus precluding entering into treaties with jurisdictions that impose little or no tax*”.