

Decision-making in the implementation of the BEPS 4 minimum standards

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GLOBTAXGOV Project - Leiden University

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Universiteit
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The Netherlands



GLOBTAXGOV
A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



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Research questions

Main research questions

- What forces (interests, institutions, traditions) influence BEPS four minimum standards implementation?
- How does the implementation process operates?
- Why does the implementation process differs between countries?

In this chapter

- What does the implementation of the BEPS 4 minimum standards say about tax sovereignty?
- How can the core value of autonomy be used to clarify the tax sovereign choices made by Australia, Spain, the Netherlands, and Mexico when implementing the BEPS 4 minimum standards?

Hypotheses

The whole research

- Reinforce the tax system – Creative compliance.
- Implementation will follow country's interests (not only economic).
- Institutional settings and power dynamics affect the implementation.

In this chapter

- Not defined as a concept, but profited from it.
- Circular approach – Is being lost but shall be gained by states on their own.

Before BEPS

Forum on Tax Administrations (FTA) – Concern for aggressive tax planning and OECD.

Organization for Economic Cooperation and Development



Need to map out actors, practices and raise awareness about transparency – Continued work afterwards.

Put all the countries on the same starting point.

What is tax sovereignty?

2013 Addressing Base Erosion and Profit Shifting

BEPS takes place and constitutes a threat in terms of tax sovereignty and revenue loss

Every state is free to set up its corporate tax system.

Sovereignty to implement.

No distortion of cross-border trade.

Tax sovereignty

Autonomy?
Agency?
Authority?
Control?

Understood as: Ability of a state to design and enact its tax policy

Autonomy – Right of self-government

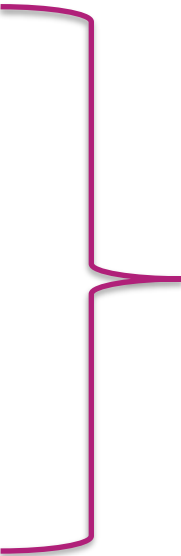
Tax Sovereignty – BEPS minimum standards

Action 5 – Harmful Tax Practices

Action 6 – Prevention of Tax Treaty Abuse

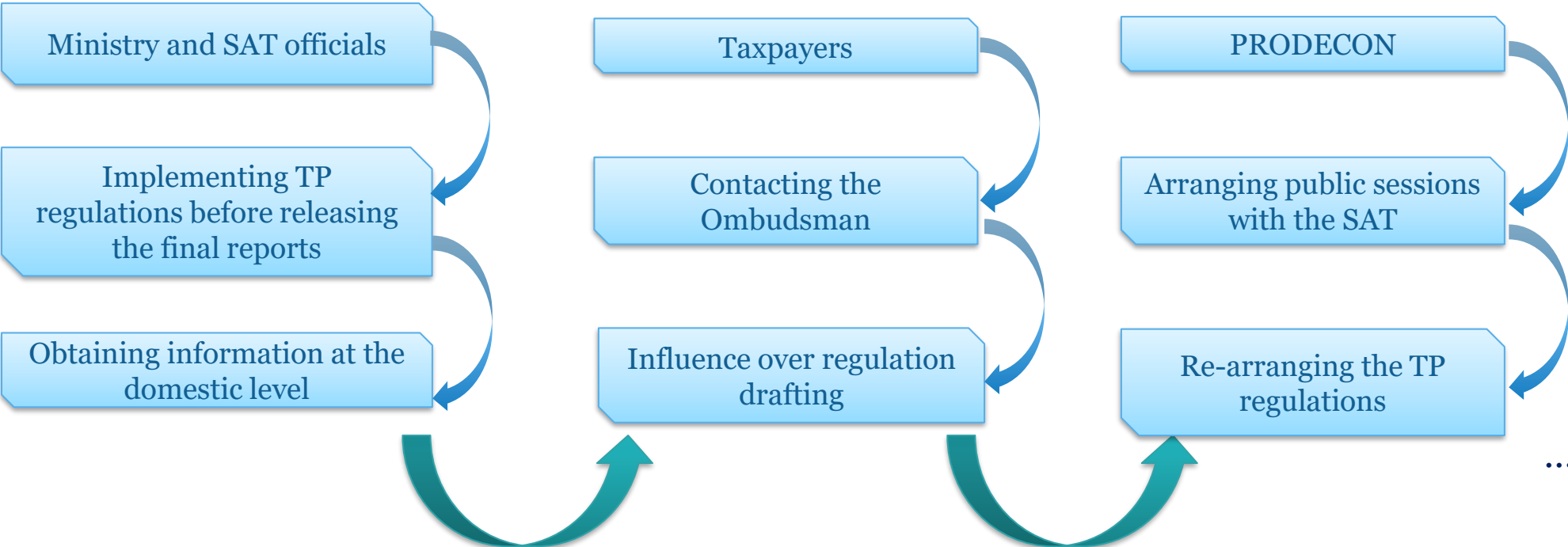
Action 13 – CbC reporting

Action 14 – Dispute resolution / Arbitration

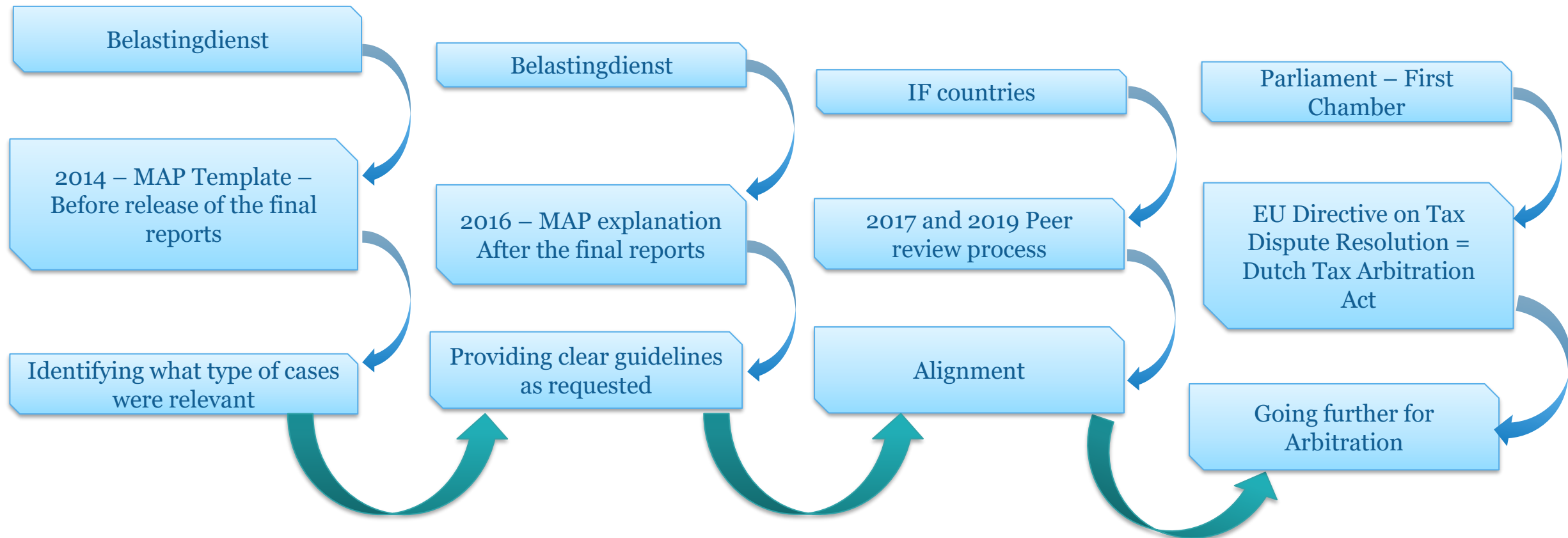
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- Easy to get support
 - Background framework (limiting the taxpayer and the state)
 - Clarifying processes

How are these standards going to be appropriated by the countries?

Mexico - Action 13



The Netherlands – Action 14



Results

- There is no autonomy without a **legal order**. Internationally this legal order is being adapted in a progressive manner, trying at the most to respect the policymaker's choices.
- There is indeed an observable change in the purview of the tax sovereignty assertion, because countries have understood that their autonomy in fiscal matters is **constrained** by the **necessity to adapt to international tax standards**.
- Countries have **learned how to look for that autonomy outside of the borders of the standards**.
- Either by **creating additional regulations** ahead of the standards scope or action (e.g. enhancing the mutual agreement procedure and adopting rules for arbitration).
- Or by implementing only those features that could contribute to the state's benefit (**selective implementation**), and developing a **formal compliance or mock compliance** of the remaining standards

Thank you for your attention

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