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State Sovereignty and the Multilateral Instrument
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The base erosion and profit shifting (BEPS) project represents a significant increase in international tax cooperation to address perceived flaws in the global tax system. As part of this project, a multilateral instrument has been proposed to simultaneously amend the bilateral tax treaties of participating states, in order to implement the treaty-based measures arising from the project. The authors of this article believe that to achieve its goals, this multilateral instrument will need to be more than a one-time undertaking; it will need to respond to new developments and resolve disputes on an ongoing basis. This may require centralized management, which, the authors argue, would have a significant impact on the tax sovereignty of participating states. Despite the current desire for tax cooperation, concerns over the potential cession of state sovereignty to an international body may limit the effectiveness of the multilateral instrument in the long run.

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** Of PwC Law LLP, Toronto. The authors note that on May 31, 2016, the OECD released a “request for input” on various questions relating to the development of the proposed multilateral instrument. The OECD document raises questions similar or identical to those identified by the authors in this article, but it does not provide any responses to those questions.